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STATE WATER RESOURCES CONTROL BOARD  
8 IN AND FOR THE STATE OF CALIFORNIA

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13 HEARING RE PROPOSED UPDATE OF THE FEDERAL CLEAN WATER  
14 ACT SECTION 303(d) LIST, at 222 North Vineyard Avenue,  
15 Ontario, California, at 9:15 a.m. on Thursday, May 30,  
16 2002, before Linda L. Jackson, CSR No. 2985

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24 Reported by: Linda L. Jackson, CSR NO. 2985

25 Job No.: 02-23498

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3</p> <p>4 PETE SILVA, Chairman</p> <p>5 DIVISION OF WATER QUALITY STAFF</p> <p>6 Ken Harris</p> <p>7 Craig J. Wilson</p> <p>8 Melenee Emanuel</p> <p>9 Diane Beaulaurier</p> <p>10 Laura Sharpe</p> <p>11 Tim Stevens</p> <p>12 OFFICE OF CHIEF COUNSEL</p> <p>13 Michael Levy</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 ONTARIO, CALIFORNIA THURSDAY, MAY 30, 2002</p> <p>25 9:15 A.M.</p>	<p style="text-align: right;">Page 4</p> <p>1 parties by region and waterbody.</p> <p>2 Please be sure to indicate on the card the</p> <p>3 region and the waterbody your comments are focused on.</p> <p>4 If you have not filled out a card and would like to</p> <p>5 speak, please let our staff know.</p> <p>6 The hearing will not be conducted in accordance</p> <p>7 with the technical rules of evidence. We will accept</p> <p>8 any testimony that is reasonably related to the 303(d)</p> <p>9 list review. Written and oral comments are all part of</p> <p>10 the record. If needed, the state board members or staff</p> <p>11 may ask questions to clarify the testimony presented.</p> <p>12 To expedite today's proceedings I will limit</p> <p>13 oral presentations to no more than five minutes. If a</p> <p>14 speaker before you has addressed your concern please</p> <p>15 state your agreement and please don't repeat the</p> <p>16 testimony.</p> <p>17 Today's hearings will focus on comments</p> <p>18 pertaining to the following sections of the report:</p> <p>19 Region 4, L.A. region, Region 7, Colorado River,</p> <p>20 Region 8, Santa Ana, and Region 9, San Diego.</p> <p>21 Testimony will not be limited to these sections</p> <p>22 so feel free to discuss any aspect of the proposed</p> <p>23 revisions to the 303(d) list.</p> <p>24 The administrative record for this hearing will</p> <p>25 remain open until June 15, 2002, so you have a couple</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 MR. SILVA: First of all, I apologize for my</p> <p>3 voice. I'm fighting a cold here. Good morning. This</p> <p>4 is the time and place for a public hearing by the state</p> <p>5 board regarding the proposed 2002 update of the Federal</p> <p>6 Clean Water Act Section 303(d)list.</p> <p>7 This is the final day of three days of planned</p> <p>8 hearings on the 303(d)list update. The purpose of this</p> <p>9 hearing is to solicit comments on the draft staff report</p> <p>10 entitled "Revision of the Clean Water Act Section 303(d)</p> <p>11 List of Water Quality Limited Segments," dated</p> <p>12 April 2nd, 2002.</p> <p>13 I am Peter Silva, member of the State Water</p> <p>14 Resources Control Board. I would also like to introduce</p> <p>15 the staff who are primarily responsible for the 303(d)</p> <p>16 list review and who will be assisting the board during</p> <p>17 this process.</p> <p>18 From the Division of Water Quality we have</p> <p>19 Craig Wilson, Melenee Emanuel, Diane Beaulaurier --</p> <p>20 I apologize for --</p> <p>21 MS. BEAULAUER: That's perfect.</p> <p>22 MR. SILVA: -- Laurie Sharpe, and Tim Stevens.</p> <p>23 And from the Office of Chief Counsel, Michael Levy.</p> <p>24 The order of the procedure will be a brief</p> <p>25 staff presentation, then testimony from interested</p>	<p style="text-align: right;">Page 5</p> <p>1 weeks left.</p> <p>2 Following the close of the record, state board</p> <p>3 staff will review and respond to all comments in</p> <p>4 writing. Written responses will be included in the</p> <p>5 final staff report.</p> <p>6 Any substantial changes made as a result of</p> <p>7 comments received will be presented in a revised staff</p> <p>8 report. This revised staff report will be made</p> <p>9 available to interested parties before the final 303(d)</p> <p>10 list is considered for adoption by the state board.</p> <p>11 Just some process. When you come up, please</p> <p>12 before you give me your testimony please identify</p> <p>13 yourself by name and address for the court reporter.</p> <p>14 And also, as I mentioned, we're going to give you five</p> <p>15 minutes. We don't have a timer today so I have my</p> <p>16 assistant here who will raise the green card when you</p> <p>17 have one minute left and then will raise it again when</p> <p>18 your five minutes are done.</p> <p>19 I would ask you to respect the time so we can</p> <p>20 get all of you done in a decent time today.</p> <p>21 With that, Craig, staff presentation.</p> <p>22 MR. WILSON: Thank you, Mr. Silva.</p> <p>23 My name is Craig J. Wilson. I'm Chief of the</p> <p>24 TMDL listing unit in the division of water quality in</p> <p>25 the state board.</p>

<p style="text-align: right;">Page 6</p> <p>1 For my presentation I would like to give you a  2 brief overview of the requirements of Section 303(d) and  3 a summary of the steps we have taken to develop the  4 list.  5 Section 303(d) of the Clean Water Act requires  6 all states to identify and prepare lists of waters that  7 do not meet applicable water quality standards with  8 technology-based controls alone. This list is commonly  9 called the 303(d) list.  10 According to federal regulations the 303(d)  11 list must be updated in even numbered years. The last  12 update took place in 1998. The 2000 update was exempted  13 by federal regulation, and the current list is due for  14 submittal to the U.S. Environmental Protection Agency by  15 October 1st, 2002.  16 The 303(d) list must identify each waterbody  17 not meeting standards and the responsible pollutant.  18 Priority rankings must also be assigned to each listed  19 waterbody. These rankings identify the priorities for  20 the development of total maximum daily loads, or TMDL's.  21 A TMDL is an allocation of pollutant loads and  22 point and non-point sources, including natural  23 background sources, and the margin of the safety.  24 The state's Porter Cologne Water Control Act  25 requires that TMDL's be adopted as basin plan amendments</p>	<p style="text-align: right;">Page 8</p> <p>1 The draft staff report contains a description of the  2 methodology and assumptions used to develop the state  3 board staff recommendations.  4 The assumptions used in preparing the draft  5 report were, one, the 1998 303(d) list would form the  6 basis for the 2000 list update; two, the regional board  7 recommendations to change existing listings would be  8 considered by the state board; and, three, if  9 insufficient information was available to list a  10 waterbody it would be placed on watch list.  11 The staff report contains fact sheets for each  12 proposed addition, deletion or change to the '98 list.  13 There are also fact sheets for many waters where new  14 information was available but no change to the 303(d)  15 list was recommended. These fact sheets describe the  16 data and information on which the recommended action was  17 based and the rationale for each listing decision. If  18 the state board staff disagreed with the regional board  19 recommendation an explanation was provided.  20 Listed waterbodies are ranked into high, medium  21 and low priority categories for TMDL development. These  22 priorities are assigned based on the significance of the  23 waterbody, the degree of nonattainment of standards or  24 loss of beneficial uses, the availability of funding,  25 and the overall need for an adequate pace of TMDL</p>
<p style="text-align: right;">Page 7</p> <p>1 and then a program of implementation be included.  2 In March of 2001 the state regional board sent  3 solicitation letters to government agencies and other  4 interested parties on their mailing list. These letters  5 requested the recipient to submit any available surface  6 water quality data and information to the appropriate  7 regional board.  8 The information that was received in response  9 to these solicitation letters as well as other  10 information already available to the regional boards was  11 used to assess the waterbodies for the 303(d) list  12 update.  13 Regional board staff prepared draft reports  14 and/or fact sheets that contain assessments of each  15 waterbody. These regional board documents were made  16 available for public comment. Each regional board held  17 public workshops or board meetings with their  18 recommendations for revision of the 303(d) list.  19 The regional boards then proposed their  20 recommendations to the state board. Based on a review  21 of the regional board recommendations, state board staff  22 are proposing a number of additions, deletions and  23 changes to the 1998 303(d) list.  24 The staff has developed a draft staff report  25 that contains our recommendations for changing the list.</p>	<p style="text-align: right;">Page 9</p> <p>1 development.  2 To summarize the state board proposal, there  3 are 797 total recommendations, including 195 additions  4 to the list, about 70 delistings, and 31 changes or  5 clarifications to existing listings. There are also 177  6 waters recommended for the watch list.  7 So, in conclusion, we're looking forward to the  8 testimony that will be presented in this hearing and I  9 know that the comments will ultimately strengthen our  10 program.  11 One last point. On May 15th the state board  12 staff issued a letter reopening the solicitation for  13 data and information because it had been so long in  14 receiving new information. The hearing record for that  15 reopened solicitation closes June 15, 2002.  16 Mr. Silva, this concludes my presentation. If  17 you have any questions I'd be happy to answer them now  18 or during the hearing.  19 MR. SILVA: Thank you.  20 Those of you who just came in, if you want to  21 fill out a card, if you want to speak, again, to staff.  22 Also there is a lot of chairs in front, like on Sundays.  23 Also before I get started just a couple of  24 things I wanted to let you know. We did have -- on  25 May 23 we had our first hearing. We had three regions,</p>

<p style="text-align: right;">Page 10</p> <p>1 Region 1, 2, and 3, and we went till about 1:00 o'clock  2 in the afternoon in the comments and we really  3 appreciate those comments. They are very valuable.  4 We had -- on May 24th we had two regions, 5 and  5 6. I believe we went till around noon, started at 9:00.  6 So that gives you an idea of the scope of the comments  7 that we've gotten from other regions.  8 And also I'm going to use my prerogative on the  9 order that we go today. I want to give the people who  10 traveled here -- probably like me -- I drove down from  11 San Diego -- I'm going to let Region 7 go first,  12 Region 9 second, Region 4 third, and Region 8 last. I  13 think that's fairer for people that had to make the trip  14 over here.  15 With that, we'll start first Region 7,  16 Mr. Roger Henning, from Palo Verde Irrigation District.  17 MR. HENNING: I'm Roger Henning with Palo Verde  18 Irrigation District in Blythe, California.  19 I was not aware of the change in dates for  20 submittal of written information, but for this meeting  21 I'd like to submit a two-page letter regarding the  22 303(d) listing of Palo Verde Irrigation District's  23 outfall drain. Due to other activities we were not able  24 to meet prior submittal deadlines.  25 And the panel has it.</p>	<p style="text-align: right;">Page 12</p> <p>1 community members that live along the areas Crosby  2 Street Park and the South Bay Power Plant. We're  3 recommending today that both of these areas are added on  4 to the 303(d) list.  5 I'm going to read some of the comments that  6 people from the community have sent with me who were not  7 able to be here today. As you can see, we drove about  8 two hours today, so it's very, you know, hard for  9 committee members to be able to leave their homes and to  10 be able to leave their work in the middle of the day to  11 come to hearings like this.  12 One of the comments from a 15-year-old youth  13 that works with us said, "I would like to have the  14 sediments in front of Crosby Street added as well as  15 South Bay's San Diego Bay added to the 303(d) list  16 because my father and I both like to fish and swim, but  17 I'm scared because I don't want any type of pollution  18 going in my lungs or in the fish we catch and eat. Also  19 I would like to see a healthy, rich wildlife community  20 and I would like to be able to kayak, sail, swim and  21 dive without risking my health in the bay." This is a  22 comment by Jim Hugh.  23 "As a child I visited the Crosby Street Park  24 and the pier and saw its bad water condition. It looked  25 as if mud was constantly being emitted, but in closer</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. SILVA: Have you submitted it already?  2 MR. HENNING: Yes, I have.  3 MR. SILVA: Okay. Good. Thank you.  4 MR. WILSON: Thank you.  5 MR. SILVA: Jose Angel, Region 7?  6 MR. ANGEL: Good morning, Vice-Chair Silva. My  7 name's Jose Angel, and I am the division chief of  8 watershed protection in Division 7.  9 Our request is pretty straightforward. We  10 submitted comments to the 303(d) list, on the proposed  11 303(d) list, with your staff and I believe we're  12 required now to have provided further items as to how we  13 can go about to delist the New River from the list.  14 MR. SILVA: Okay. Any question from staff?  15 Okay. Thanks, Jose. Appreciate it.  16 Okay. That was fast. Anybody else from  17 Region 7? Last call.  18 Region 9. We will start with Nohelia Ramos  19 from the Health Coalition.  20 MS. RAMOS: Good morning. My name is Nohelia  21 Ramos. I'm from the Environmental Health Coalition.  22 Our address is 1717 Kettner Boulevard, Suite 100, San  23 Diego, California 92101. I'm here as an organizer for  24 the Clean Bay Campaign.  25 For the last four months I've spoken to</p>	<p style="text-align: right;">Page 13</p> <p>1 look proved it was the color of the water." This was a  2 comment by Juan Jiminez.  3 A comment by Federica Martinez from Barrio  4 Logan says [Spanish] "My husband likes to fish in the  5 bay and we have no other bay to go and swim in."  6 Thank you very much for your time.  7 MR. SILVA: Did you submit written comments?  8 MS. RAMOS: These are the written comments that  9 were sent, that were mailed in.  10 MR. SILVA: Okay. Thank you.  11 Bruce Reznik?  12 MR. REZNIK: Good morning. I'm Bruce Reznik,  13 executive director of San Diego Baykeeper, also a member  14 of the AB 982 public advisory group. Our address is  15 2924 Emerson Street, Suite 220, San Diego, California  16 92106.  17 First I'd like to thank the state board and the  18 regional boards for their hard work on this list. I  19 think certainly in Region 9 it's much appreciated.  20 We've had a long history of lagging behind other regions  21 in our listing, something that I think started to be  22 taken seriously in the '98 process and is continuing  23 here.  24 I'd also like to thank the state board for the  25 process itself and the input we've been allowed to</p>

<p style="text-align: right;">Page 14</p> <p>1 provide both the regulated community and the 2 environmental committee. 3 Lastly, for the extension of the comment 4 period. We'll be getting some more written comments in. 5 That is greatly appreciated as well. 6 The good thing from our side for this listing 7 is, as I said, in Region 9, historically so underlisted, 8 we are finally starting to see this taken seriously. 9 We had almost 70 new additions to the list. 10 Considering we only had 36 impaired waterbodies listed 11 before, which was a gross undercounting, we're starting 12 to get where we need to be. 13 And in particular I was very happy to see the 14 San Diego River, something we worked hard on, at least 15 some of the stretches of the river, on the new list and 16 listed in the draft listing. Hopefully that'll stay on. 17 Some of the bad with the list. Just wanted to 18 point out there are some stretches of San Diego River 19 where we submitted extensive comments that were not 20 listed, and we'd like to still push for that. 21 We're also pushing for south portions of San 22 Diego Bay, which I know already has been mentioned a 23 little and I think Al from the EHC is going to cover at 24 more length. 25 Some more general comments you've heard already</p>	<p style="text-align: right;">Page 16</p> <p>1 zero on that. I know our regional board is working hard 2 but obviously that's something that's continuing to be a 3 frustration for us. 4 And, lastly, I just want to touch on Table 5, 5 which is completion dates. Once again San Diego 6 seriously lacks in having a lot of completion dates and 7 we tend to backload all our dates, which is again of 8 great concern to San Diego Baykeeper, that we continue 9 to push things further and further out. 10 I suspect in upcoming years we're going to get 11 more and more waterbodies listed as our monitoring 12 programs increase. The more we backload the more 13 certain we are not going to meet our deadlines in 14 getting our waters restored in San Diego. Thank you. 15 MR. SILVA: We got a lot of comments on the 16 issue of the watch list. Helen -- I can't read it. 17 MS. BOURNE: Hello. My name's Helen Bourne and 18 I'm also with Environmental Health Coalition and I 19 live -- my address is 7040 Avenida Encinas in Carlsbad. 20 And I would like to ask you to please list 21 Crosby Street Park. This is a neighborhood park for 22 three heavily populated communities. And this is their 23 view. 24 I have some pictures. I have copies of these 25 photos if I could submit them after this.</p>
<p style="text-align: right;">Page 15</p> <p>1 from, I think, a lot of the environmental community. We 2 are not supportive of the watch list concept. It is our 3 fundamental belief if you've got evidence you should 4 list. The watch list, as I've said in Tag meetings -- 5 it's not that I don't support a watch list. I think the 6 watch list refers to every waterbody in the state and we 7 still have a lacking of a statewide ambient monitoring 8 program. We need to focus on that. 9 Every waterbody in California not only should 10 be being watched but is legally required under the Clean 11 Water Act to be watched. So this concept of a watch 12 police we're very frightened is going to be manipulated. 13 Waterbodies I think there is sufficient evidence for 14 listing -- and I think South San Diego Bay is actually a 15 perfect example -- are going to get stuck on a watch 16 list. Nothing is going to happen. 17 Probably the concern is greatest on San Diego 18 which has the greater number of waters on the watch. I 19 didn't get to count them all but I think we have almost 20 70 on our watch list. It's six pages of like a ten-page 21 watch list. So it's of great concern to us. 22 The only things that I was just going to point 23 out in looking through this fairly extensive 303(d) 24 listing in San Diego is the table -- I believe it's 25 Table 6 -- TMDL's completed. Region 9 is still a big</p>	<p style="text-align: right;">Page 17</p> <p>1 There is demonstrated toxicity and chemical 2 contamination in the sediments along this park up into 3 the 10th Street -- 10th Avenue Pier. And it just -- I 4 mean there's mothers, babies, and you can smell the 5 toxicity from this park. 6 And I would also like to comment briefly on 7 South San Diego Bay along by the South Bay Power Plant. 8 Because of the overheating of water that's heated-up bay 9 water every day, something like 601 gallons per day goes 10 through this. And it also has chlorine, very heavily 11 chlorinated, and this is really causing problems with 12 the ecosystem and with San Diego Bay of toxicity. All 13 right. Thank you. 14 MR. SILVA: Was that Felicita Creek? 15 MS. BOURNE: No, that's a separate one. 16 MR. SILVA: Okay. Thank you. Laura Hunter? 17 MS. HUNTER: Yes. My name's Laura Hunter. I 18 am director of the Clean Bay Campaign for the 19 Environmental Health Coalition. And just to clarify 20 your question, Felicita Creek is a different creek. I 21 wish that I could actually speak about that a little 22 today. 23 But the Crosby Street designation, basically 24 what we're asking is that you would extend an existing 25 303(d) listing of contamination near the shipyards. And</p>

1 unfortunately -- I wish I had a map. The designation  
2 kind of stops right at the southern boundary of the park  
3 where people start using it. It really needs to be  
4 extended to include the park so it goes up to what we  
5 call the south end of the 10th Avenue.

6 So it's really an extension of the current  
7 listing that we have for -- it's called near the  
8 shipyards, I think, or near the Coronado Bridge and  
9 that's the Crosby Street. And that -- maybe I'll start  
10 with that one.

11 We really feel strongly that the evidence is in  
12 the record to show that that area has beneficial uses  
13 that the public want to express there, fishing and  
14 swimming, and they are not able to. As you've heard  
15 from both the testimony, the written comments and the  
16 photos, people do swim there. They do fish there. And  
17 they are not supposed to because the quality of the  
18 sediment, the quality of the water, isn't high enough.

19 I am also carrying with me today a letter from  
20 Councilman Ralph Inzunza of the city council of San  
21 Diego who has asked that you seriously consider adding  
22 this area that is in his district. Again, if you know  
23 that community it's heavy urbanized, underneath freeway  
24 overpasses that were built in the community. This is  
25 one of their only direct contacts with nature, the

1 time.

2 The Fish and Wildlife Service says "We're very  
3 concerned that the hot water and the current condition  
4 of the ecosystem is impacting eel grass beds."

5 I think it's also interesting that in one of  
6 the testing events that the power plants did in their  
7 discharge channel they got very, very high copper, like  
8 26 micrograms per liter, something like that, and they  
9 said, well, that's because we just had a rain and it  
10 churned up the sediments and the sediments are loaded  
11 with copper.

12 Well, okay. Then I think probably it's their  
13 copper that was there that they discharged from before  
14 But either way, the area's heavily impacted and needs to  
15 be listed on the 303(d).

16 The last thing I want to raise on this one is  
17 that if you look at other power plants and other similar  
18 situations in the state, such as the Morro Bay, the Duke  
19 power plant at Morro Bay, I mean the CEC staff made a  
20 finding on April 25 that basically concluded that the  
21 Morro Bay ecosystem has been in a state of chronic  
22 estuarine degradation for five decades.

23 That's what we have in South San Diego Bay too.  
24 It's worse for us because our power plant's not at the  
25 mouth of a very active ocean environment. It's at the

1 environment, and should be a swimmable, fishable area.

2 And it really needs to be listed. Maybe it's  
3 not the most toxic spot we can find in the bay.  
4 Unfortunately there's probably others that are worse.  
5 This is one of the most used areas by the public and  
6 therefore it's really not meeting its use.

7 The other area we wanted to focus on is South  
8 San Diego Bay where the power plant is. We did submit a  
9 deadly power into the record which is a compilation of  
10 all the data that's existing that we could find that  
11 talks about the impacts, and I could review some of  
12 those issues that were raised in there. I don't think I  
13 need to.

14 But I do want to point out that since then the  
15 regional board has issued -- in fact I just received  
16 this yesterday -- a 13267 compliance letter directing  
17 Duke Power to undertake six studies based on the  
18 findings where essentially they reviewed it and they  
19 pretty much agree with us to the power plant is causing  
20 impacts.

21 There is a degraded benthos in the South Bay --  
22 let me get another -- it's clear that there are  
23 detrimental impacts from the South Bay discharge on the  
24 biological communities within the eastern portion --  
25 this reading from a regional water board letter at this

1 end of a 14-mile-long bay where it takes a month for the  
2 water to change out. So that power plant just keeps  
3 recycling and sterilizing that water for a month before  
4 those species get to leave.

5 The halibut issue is also very important and  
6 the evidence in the record is clear halibut are reduced  
7 use of that area because of the conditions of it today.

8 The last thing I would say on Felicita Creek.  
9 I can speak from personal experience. That is near my  
10 house. And that creek really needs to be listed. We  
11 also -- it takes very high sediment loads from the area  
12 too. There is agriculture in that area; there's a toxic  
13 waste cleanup, Chatham Brothers is upstream from poor  
14 old Felicita Creek; pool discharges -- all kinds of  
15 things go into the creek. It runs foamy a lot of the  
16 time. And we would really support keeping that on the  
17 list.

18 So please keep everything on the list that's  
19 there but please elevate these two, Crosby Street and  
20 South San Diego Bay, to be added to the list. Thank  
21 you.

22 MR. SILVA: Next, Richard Gilb, Port of San  
23 Diego.

24 MR. GILB: Good morning, Mr. Silva. I'm  
25 Richard Gilb with the Port of San Diego, 3165 Pacific

<p style="text-align: right;">Page 22</p> <p>1 Highway, San Diego 92001.</p> <p>2 I'd like to reiterate some of the comments that</p> <p>3 we previously submitted in writing on a letter dated</p> <p>4 May 23.</p> <p>5 First of all, we'd like to thank the region</p> <p>6 staff for hard work in putting the list together. But</p> <p>7 we'd like to discuss three sites that were proposed at</p> <p>8 changes to the 1998 list, namely, San Diego Bay Kellogg</p> <p>9 Street Beach, San Diego Bay Shelter Island Shoreline</p> <p>10 Park and San Diego Bay Coronado.</p> <p>11 Region 9 staff has proposed that these three</p> <p>12 sites be incorporated as changes, and we ask that they</p> <p>13 be incorporated as new listings for the following</p> <p>14 reasons: Namely, there was no water quality sample data</p> <p>15 collected at these three sites during the 1998 listing</p> <p>16 process. The data collected in 1998 was from different</p> <p>17 hydrologic sub-areas than the areas that were listed in</p> <p>18 2002, namely, that was for Kellogg Street Beach and</p> <p>19 Shelter Island Shoreline Park.</p> <p>20 As far as the San Diego Bay Coronado site, we'd</p> <p>21 ask for some more clarification in the name, that it be</p> <p>22 listed as San Diego Bay Coronado Tidelands Park, and the</p> <p>23 data that is used to indicate that as a change was</p> <p>24 collected also in the year 2000 and it was for Pacific</p> <p>25 Ocean. So we believe that because of the different</p>	<p style="text-align: right;">Page 24</p> <p>1 of Aliso Creek for toxicity based entirely on three</p> <p>2 sample dates in 1998 and 1999, which involved analysis</p> <p>3 for two different biological organisms, and the reports</p> <p>4 of which -- the results of which were described in the</p> <p>5 study funded by a 205 J grant.</p> <p>6 However, the staff report inappropriately</p> <p>7 summarizes the studies' detailed statistical discussion</p> <p>8 in a way that overlooks some of the data and mixes</p> <p>9 apples and oranges to give a very misleading impression.</p> <p>10 What the study does say is this: For the first</p> <p>11 organism, which is a juvenile fathead minnow, basically</p> <p>12 a baby fish, under low flow conditions there was no,</p> <p>13 zero, inhibition of growth or survival in any of the</p> <p>14 four sampling locations in the creek. These four 100</p> <p>15 percent survival tests were completely ignored by the</p> <p>16 regional board staff in calculating the statistics</p> <p>17 presented in your staff report.</p> <p>18 Storm event survival of minnows at the creek</p> <p>19 headwaters, in a storm event at the creek headwaters,</p> <p>20 where is there no urban influence, was equal to the</p> <p>21 lowest survival rate downstream in the first storm event</p> <p>22 that was measured. And it was actually lower in the</p> <p>23 second storm than three out of the four urban impacted</p> <p>24 sampling sites downstream.</p> <p>25 The basin plan states that survival of aquatic</p>
<p style="text-align: right;">Page 23</p> <p>1 waterbodies it should be listed as a new addition, not</p> <p>2 as a change.</p> <p>3 Finally, even though we've asked that Kellogg</p> <p>4 Street Beach be shown as a new listing we also ask that</p> <p>5 it be removed from the list because we believe the</p> <p>6 impairment there is related to sewage spills. We</p> <p>7 submitted some data with our written comments which</p> <p>8 seemed to indicate that. And the 303(d) process and the</p> <p>9 TMDL process is directed at items that aren't already</p> <p>10 under regulation and, we believe that sewage spills are</p> <p>11 currently regulated by the regional board.</p> <p>12 The reason we believe these are important to</p> <p>13 list these as new additions, as not changes, because it</p> <p>14 seems to show that local government, municipalities, may</p> <p>15 have ignored these sites in the past if they are shown</p> <p>16 as changes to '98 when they are actually new additions.</p> <p>17 Thank you.</p> <p>18 MR. SILVA: Thank you.</p> <p>19 Nancy Palmer?</p> <p>20 MS. PALMER: My name is Nancy Palmer. I'm the</p> <p>21 city watershed manager for the City of Laguna Niguel.</p> <p>22 I've come to speak about Aliso Creek, which is proposed</p> <p>23 to have additional listings for toxicity and phosphorus.</p> <p>24 First I'd like to speak about the proposed</p> <p>25 toxicity listing. The staff report recommends listing</p>	<p style="text-align: right;">Page 25</p> <p>1 life in surface waters subjected to a waste discharge</p> <p>2 shall not be less than that for the same waterbody in</p> <p>3 areas unaffected by the waste discharge. Therefore, for</p> <p>4 juvenile fathead minnows, at least, no toxicity as</p> <p>5 defined in the basin plan was clearly demonstrated by</p> <p>6 that 205 J study.</p> <p>7 The second organism, which is Ceriodaphnia,</p> <p>8 which is a type of a water flea, for the first storm the</p> <p>9 survival at the un-urbanized headwaters was only</p> <p>10 5 percent, which is not a whole lot higher than the</p> <p>11 zero percent that was shown at all four of the</p> <p>12 downstream urbanized locations for that storm event.</p> <p>13 For the second storm event, Ceriodaphnia</p> <p>14 survival was completely erratic over the length of the</p> <p>15 stream: 100 percent at the headwaters, zero percent at</p> <p>16 the next site downstream, 100 percent again at the next</p> <p>17 site and zero percent at the one below that.</p> <p>18 What does that really mean? These data are</p> <p>19 inadequate for deciphering whether Ceriodaphnia survival</p> <p>20 is less in Aliso waters affected versus unaffected by</p> <p>21 urban runoff, which is a critical aspect for defining</p> <p>22 toxicity under the basin plan.</p> <p>23 Furthermore, the staff report also inaccurately</p> <p>24 states that the 205 J study indicated that</p> <p>25 organophosphate pesticides are a significant component</p>

<p style="text-align: right;">Page 26</p> <p>1 of the aquatic toxicity in those storm samples. In fact  2 the 205 J study did not conduct any sampling for  3 organophosphates at all, merely speculates on possible  4 sources of toxicity.  5 No confirming tests were completed to determine  6 why the Ceriodaphnia died in Aliso Creek. It is  7 theoretically possible that something in the natural  8 background of storm flows in the un-urbanized watershed  9 may be at least partly responsible for the observed  10 mortality.  11 Much more toxicity data will be forthcoming in  12 this watershed next year under the new Region 9 NPDES  13 permit requirements. If watershed sampling in the  14 coming year under the new permit requirements confirms  15 that toxicity is an issue, I would hope that follow-up  16 studies would be conducted to determine the cause. That  17 would be an obvious next step.  18 For now, the city recommends that putting Aliso  19 Creek on the watch list for toxicity is a more  20 appropriate step.  21 That's all I have to say.  22 MR. SILVA: Thank you.  23 Richard Watson?  24 MR. WATSON: My name is Richard Watson, with  25 Richard Watson and Associates, 21922 Viso Lane, Mission</p>	<p style="text-align: right;">Page 28</p> <p>1 The first sentence of the report's executive  2 summary region board staff stated that Rainbow Creek's  3 listing is, quote, for eutrophication; then one  4 paragraph later noted that eutrophic conditions have not  5 be observed in the creek. This fact is repeated later  6 in the report. The listing for eutrophication is not an  7 accurate reflection of the condition of the creek. The  8 current listing is unfounded and should be changed.  9 A listing for nutrients for Rainbow Creek is  10 also inappropriate. Waterbody listings that are  11 ultimately used to develop TMDL's must be based on data  12 with respect to the exceedances of load allocations and  13 waste load allocations for a given waterbody.  14 Allocations can only be developed after the assimilative  15 capacity, or loading capacity, of the waterbody has been  16 identified. No such identification has been made for  17 Rainbow Creek because the necessary studies have not  18 been performed.  19 In fact, EPA Region 9 in its comments on this  20 draft TMDL said that, quote, "Regional board must change  21 its approach to defining the loading capacity and TMDL  22 for nitrogen."  23 EPA urged the San Diego regional board staff to  24 directly determine the loading capacity by starting with  25 the desired water quality objectives and using stream</p>
<p style="text-align: right;">Page 27</p> <p>1 Viejo, California.  2 Good morning, Member Silva. I'm here today  3 representing Hines Nurseries. Like to give you a few  4 comments regarding the 2002 Clean Water Act 303(d) list  5 as it pertains to Rainbow Creek.  6 On May 9, 2002, the San Diego regional board  7 heard a proposed nutrient TMDL for Rainbow Creek and  8 voted unanimously for a continuance to await state board  9 decision on this list and to allow the staff more time  10 to prepare better data.  11 The San Diego regional board staff had stated  12 in their staff report on their 2002 update of the 303(d)  13 list that, quote, "The impairment for Rainbow Creek has  14 been changed from eutrophication to nitrate and  15 phosphorus. The original designation was based on a  16 faulty assumption that eutrophic conditions existed  17 because of elevated levels of nutrients."  18 Regional board staff, in noting that the  19 current designation was faulty, attempted to simply  20 change it themselves rather than submit a recommendation  21 for change to the state board. Rainbow Creek is on the  22 1998 list for eutropic conditions. However, in the San  23 Diego regional board staff report for the proposed TMDL,  24 regional board staff acknowledged several times that the  25 creek is not eutrophied.</p>	<p style="text-align: right;">Page 29</p> <p>1 flow records to calculate loading capacity and TMDL's  2 for total nitrogen and total phosphorus. This requested  3 change presents an opportunity to strengthen the  4 scientific basis for a Section 303(d)listing and to  5 institute adaptive management as recommended by the  6 National Research Council.  7 Due to the numerous data gaps with respect to  8 the nutrient data, no 303(d) listing is currently  9 appropriate for Rainbow Creek. Hines Nurseries  10 recommends instead that it be delisted for  11 eutrophication and placed on the watch list for  12 nutrients.  13 This will allow regional board staff to conduct  14 studies necessary to determine the status of Rainbow  15 Creek and help insure that any future TMDL will  16 accurately reflect the condition and listing status of  17 the waterbody.  18 Thank you for this opportunity.  19 MR. SILVA: Thank you very much.  20 Before I go to the next speaker I want  21 everybody to know as far as timing it looks like -- even  22 the number of cards -- we probably won't be done with  23 Region 9 until about 10:30, and Region 4 we've got about  24 an hour and a half worth of cards, so probably it won't  25 get done until about noon, so you can time yourself</p>



<p style="text-align: right;">Page 30</p> <p>1 accordingly.</p> <p>2 If you're here for Region 8, if you want to do</p> <p>3 something else, looks like we won't get to you until</p> <p>4 lunchtime. I'm going to work through lunch if you don't</p> <p>5 mind. I'm going to work through lunch to try to get</p> <p>6 done.</p> <p>7 Again, Region 9 will probably go till about</p> <p>8 10:30, Region 4 until about noon. That's just an</p> <p>9 estimate, just to give you some timing. If you want to</p> <p>10 sit here and be bored all morning, it's up to you.</p> <p>11 Okay. George Wilkins?</p> <p>12 MR. WILKINS: Good morning. My name is George</p> <p>13 Wilkins. I'm here representing the San Luis Rey</p> <p>14 Watershed Council.</p> <p>15 The San Luis Rey Watershed Council is an</p> <p>16 organization -- it's a stakeholder organization in this</p> <p>17 northern San Diego County and we have about 120 member</p> <p>18 organizations that belong to us.</p> <p>19 I'm the former watershed coordinator for the</p> <p>20 council and I was asked to speak on behalf of the</p> <p>21 council specifically for the San Luis Rey, but I believe</p> <p>22 that our concerns apply to some of the other watersheds</p> <p>23 in San Diego County.</p> <p>24 Our council is comprised of over 120 member</p> <p>25 organizations, including local, state, federal</p>	<p style="text-align: right;">Page 32</p> <p>1 website you can see that most of the water that is sold</p> <p>2 retail throughout the county that comes from MWD and</p> <p>3 wholesale procured County Water Authority is between 467</p> <p>4 and about 600 parts per million.</p> <p>5 In the San Luis Rey watershed we have a basin</p> <p>6 plan standard that sets the limit at 500 parts per</p> <p>7 million, and that is for municipal water supply as</p> <p>8 beneficial use. We also have listed as beneficial use</p> <p>9 of agriculture, and the standard for is that much</p> <p>10 higher. It's about 1500 parts per million.</p> <p>11 Our primary concerns are that listing of the</p> <p>12 San Luis Rey River and other watersheds in San Diego</p> <p>13 county for these constituents will have an adverse</p> <p>14 impact on the large agricultural community in San Luis</p> <p>15 Rey River and other parts of northern San Diego county.</p> <p>16 And we're concerned that it will also present a</p> <p>17 conflict with other goals of the state for water supply.</p> <p>18 With the issues that are going on right now with the 4.4</p> <p>19 agreement, the water supply is a big concern right now.</p> <p>20 What we're concerned about is by listing this now it may</p> <p>21 complicate other issues, especially water supply issues,</p> <p>22 even more.</p> <p>23 The reason for this primarily are that we do</p> <p>24 import high TDS water into the watershed in San Diego</p> <p>25 County. As I stated, the basin plan standard is 500</p>
<p style="text-align: right;">Page 31</p> <p>1 organizations, special districts, nonprofit</p> <p>2 organizations and seven native American tribes. And we</p> <p>3 have concerns specifically about proposed listings for</p> <p>4 TDS and chlorides for the San Luis Rey and for other</p> <p>5 parts of the San Diego County, although our primary</p> <p>6 concern is for San Luis Rey watershed.</p> <p>7 We respectfully request the state water</p> <p>8 resource control board not include the proposed regional</p> <p>9 board recommendations for listing San Luis Rey for total</p> <p>10 dissolved solids and for chlorides. Our reasons for</p> <p>11 taking this position are several.</p> <p>12 The main reason is that we believe and the</p> <p>13 analysis has shown so far that the primary source of TDS</p> <p>14 and chloride that's coming into San Diego County is from</p> <p>15 imported water. We receive about 90, 95 percent of our</p> <p>16 water supply from a combination of Colorado River water</p> <p>17 and Northern California water. About 70 percent comes</p> <p>18 from the Colorado River, about 30 percent from Northern</p> <p>19 California, and the Colorado River water is very high in</p> <p>20 TDS and chloride, so the water that comes into San Diego</p> <p>21 County is already very high.</p> <p>22 And I didn't submit written comments to this.</p> <p>23 This is something that was decided that we would</p> <p>24 actually speak very recently, but if you look at records</p> <p>25 from County Water Authority that are available on their</p>	<p style="text-align: right;">Page 33</p> <p>1 parts per million but the water coming in is already at</p> <p>2 or near the basin plan limits. In many cases it's</p> <p>3 actually over it. That means when people use water for</p> <p>4 irrigation, for watering their lawns, it will basically</p> <p>5 already exceed the basin plan.</p> <p>6 Our primary concern is that if agriculture</p> <p>7 cannot comply with regulations because the water there</p> <p>8 is derogating without putting fertilizer or anything</p> <p>9 else in it, if it exceeds the standards they may not be</p> <p>10 able to stay in business, and we would prefer to have</p> <p>11 agriculture than to see homes replace that land.</p> <p>12 It's a complicated issue. We would really</p> <p>13 request that you look at this, perhaps put us on the</p> <p>14 watch list. We would like to see the TDS and chloride</p> <p>15 levels decrease, but we think it will be a long-term</p> <p>16 solution with desalinization and conservation and other</p> <p>17 things that would actually help. So we appreciate your</p> <p>18 hearing our request. Thank you.</p> <p>19 MR. SILVA: Thank you. Okay.</p> <p>20 MR. WELCH: Thank you. My name's Mike Welch,</p> <p>21 2735 San Clemente Terrace, San Diego.</p> <p>22 Today I'm here with a group of other speakers</p> <p>23 that will be representing a group in San Diego called</p> <p>24 the San Diego County 303(d) work group. This group</p> <p>25 includes the County of San Diego and a variety of water</p>

<p style="text-align: right;">Page 34</p> <p>1 agencies, waste water agencies, storm runoff agencies 2 and other interested groups. 3 We will be speaking about the number of issues 4 today but principally our concerns are thus: The 303(d) 5 and TMDL processes we believe are very important and 6 appropriate for dealing with waterbodies where we're not 7 attaining beneficial uses, where they are not meeting 8 fishable and swimmable, et cetera. 9 We disagree, however, with diluting the 303(d) 10 list down with parameters that don't have any effect on 11 beneficial uses whatsoever. 12 TDS is one of those. San Diego regional board 13 proposes that TDS be listed as a water quality limited 14 segment for 11 different waterbodies and the San Diego 15 County 303(d) work group believes it's neither 16 appropriate or necessary to list those waterbodies as 17 being water quality limited by TDS. 18 Further, such a listing will set in motion a 19 series of steps, including TMDL processes, which cannot 20 lead to any significant improvement in water quality but 21 can lead to significant economic impacts and indeed 22 water use restrictions. 23 For this reason we request that the state board 24 not list those 11 waterbodies as being water quality 25 limited for TDS. To understand the reasoning behind</p>	<p style="text-align: right;">Page 36</p> <p>1 solids in the entire region, didn't take into account 2 economic and social factors associated with such 3 imported water use, didn't recognize that water quality 4 varies significantly from time of year, that in fact in 5 certain times of year we don't have any water at all in 6 our watercourses. 7 It also didn't recognize that there's 8 significant interchange between ground and surface 9 waters in the San Diego county flowing waters and that 10 the basin plan groundwater quality objectives don't 11 coincide with the surface water quality objectives. 12 All of these inconsistencies, however, were not 13 taken into account in the original 1975 basin plan 14 objectives for a couple of reasons. One is that at the 15 time the regional board was only in the game of 16 regulating point source discharges and so they didn't 17 take a look at what the impacts would be associated with 18 regulating non-point source activities, such as imported 19 water use; and, secondly, one of the key justifications 20 in the 1975 basin plan was that by assigning 500 21 milligram per liter TDS objectives it gave them a 22 convenient tool for getting some of the then secondary 23 waste water effluent discharges out of our streams and 24 rivers. 25 More than 25 years has elapsed since those</p>
<p style="text-align: right;">Page 35</p> <p>1 this we really need to go back and address how the basin 2 plan TDS objectives were established in Region 9 in the 3 first place. 4 They were originally established in 1971 in the 5 interim plan and then formally established in 1975 in 6 the basin plan as sort of wouldn't it be nice if we 7 could attain water quality goals. The 500 milligrams 8 per liter TDS objective was assigned literally 9 regionwide and assigned on the basis that the secondary 10 nonenforceable drinking water standards for TDS were 500 11 milligrams per liter. 12 At the time they were assigned it was 13 recognized that virtually all San Diego County 14 waterbodies did not comply with this 500 milligram 15 limit, particularly during dry season years. 16 Nevertheless, it represented a reasonable wouldn't it be 17 nice if we could achieve goal. 18 In assigning these water quality objectives the 19 basin plan didn't take into account what the actual 20 beneficial uses were on any given watercourse, didn't 21 differentiate one watercourse's need from another, 22 didn't recognize the fact that particularly in the 23 1970's at the time the imported water supply TDS was 700 24 milligrams per liter, didn't recognize the fact that 25 imported water is the dominant source of total dissolved</p>	<p style="text-align: right;">Page 37</p> <p>1 original basin plan objectives have been established and 2 regional board's role has expanded significantly. 3 Unfortunately, however, the basin plan has 4 never been updated to reflect water quality TDS needs 5 that are actually needed to protect beneficial uses. 6 The regional board has continued this one size fits all 7 approach for TDS basin plan objectives. 8 There is really only two instances where the 9 regional board has changed basin plan objectives for 10 surface waters in the last 25 years. Both of these were 11 discharger-sponsored efforts and it's interesting to 12 note in each of these instances -- one was the Santa 13 Margarita River and the other was the San Diego River -- 14 the justification the regional board used for changing 15 those was that the historical water quality greatly 16 exceeded basin plan objectives and that the water 17 quality needed to attain beneficial uses greatly 18 exceeded the water quality objectives. 19 So in each of those instances the regional 20 board agreed to modestly increase the TDS standards but 21 still keeping them well below the historical water 22 quality and the water quality necessary to attain 23 beneficial uses. 24 Now we come and see that the very same data 25 sets used to justify those basin plan changes back in</p>

<p style="text-align: right;">Page 38</p> <p>1 the 1980's now are used as justification for the fact  2 we're not complying with appropriate water quality  3 standards. Such a decision doesn't take into account  4 the fact that beneficial uses are not being infringed  5 upon by the current water quality in our 11  6 watercourses. Indeed, in the case of the San Diego  7 River the one objection that was put in front of  8 regional board back in the 1980's to changing the basin  9 plan objectives was that good quality water that goes  10 down the river might actually be environmentally  11 advantageous because such low TDS water might affect the  12 salinity balance in the downstream estuary.  13 So we in the work group find it a little  14 incredulous right now that the regional board proposes  15 to do something it never did before, that is, list TDS  16 as being water quality limited to a number of these  17 segments.  18 We believe it's appropriate to use the  19 rationale that the regional board used to develop past  20 303(d) lists for assessing impacts associated with total  21 dissolved solids. In past 303(d) lists they took a look  22 at what were actual beneficial uses, what were the  23 sources of the total dissolved solids, and are the total  24 dissolved solids consistent with imported water quality.  25 The fact is they weren't.</p>	<p style="text-align: right;">Page 40</p> <p>1 interactions and influences that occur in the watersheds  2 of San Diego County that prevent the attainment of basin  3 plan objectives for TDS in the surface waters.  4 Those interactions include the  5 interconnectivity of the groundwater and surface waters  6 within the county, the seasonal nature of the  7 precipitation in the region, and the use of imported  8 water in the watershed as Dr. Welch talked about.  9 First I'd like to address the interconnectivity  10 of the surface waters and groundwaters. The 11  11 watersheds proposed for this listing, for TDS, chloride  12 and sulfate, that function as interconnected groundwater  13 and surface water systems, these watersheds are full of  14 alluvial materials that transmit and store large  15 quantities of groundwater.  16 The ultimate fate of much of this groundwater  17 is that it provides the base water for surface streams  18 within the county. In fact groundwater base water  19 accounts for nearly 100 percent of the base water in the  20 surface streams during the dry season in San Diego  21 County.  22 Interconnectivity of the groundwater and  23 surface water systems in San Diego County is a  24 completely natural phenomenon. The fact that this  25 interconnectivity exists necessitates that the basin</p>
<p style="text-align: right;">Page 39</p> <p>1 So they recognized there was no reason to put  2 total dissolved solids on the 303(d) list because doing  3 so would set forth a series of steps that would then  4 lead to possible restrictions on imported water use.  5 We recognize now that the 303(d) list for total  6 dissolved solids is a very, very important issue. We  7 request that you take a look at historic water quality,  8 take a look at consistency with imported water supply,  9 and take a look at the water supply necessary to attain  10 beneficial uses in the developing the 303(d) list.  11 Thank you.  12 MR. SILVA: Thank you.  13 David Keith?  14 MR. KEITH: Good morning. I am here with the  15 303(d) San Diego County work group along with Dr. Welch  16 to address TDS issues. I would like to talk about the  17 hydrodynamic issues related to TDS in San Diego County  18 primarily.  19 As part of our effort in this investigation we  20 reviewed over 36 documents and database of the water  21 quality related to surface water and groundwater for TDS  22 and chloride and sulfate, and I'd like to point out that  23 the chloride and sulfate issues essentially coincide  24 with the TDS one-for-one.  25 There are several natural hydrodynamic</p>	<p style="text-align: right;">Page 41</p> <p>1 plan objective for groundwater and surface water are  2 compatible.  3 However, the Region 9 basin plan water quality  4 objectives for surface water and groundwater are  5 incompatible. For instance, in many watersheds the  6 surface water the objectives are 500 milligrams per  7 liter, whereas the groundwater objective is 15  8 milligrams per liter.  9 TDS concentrations of most of the watersheds  10 vary from upstream to downstream. In fact all the  11 watersheds. In general the TDS concentrations are near  12 500 milligrams per liter in the upper portions closest  13 to the mountains where a natural recharge occurs. As  14 you move closer to the coast TDS concentrations often  15 exceed 1500 milligrams per liter due to the use of  16 imported water, irrigation practices, intrusion of salt  17 water from natural tidal influences.  18 And it's not reasonable to expect that surface  19 water quality objectives can meet higher standards than  20 groundwater quality objectives in the system when the  21 systems are interconnected.  22 The second point I would like to address  23 involves the seasonal nature of precipitation in the  24 region. There is a consistent relationship between the  25 magnitude of surface flow in San Diego county watersheds</p>

<p style="text-align: right;">Page 42</p> <p>1 and the concentration of TDS, chloride and sulfate. TDS  2 concentrations during periods of high flow typically  3 will decrease compared to TDS concentrations during  4 periods of low flow.  5 The TD concentrations during periods of low  6 flow basically reflect the TDS concentrations down in  7 the adjacent groundwater aquifers, with possible basin  8 contributions. It is important to note that on a mass  9 loading basis during periods of high flow during storm  10 events the TDS concentrations actually decrease and in  11 some cases attain the 500 milligram per liter objective.  12 However, these are transient events. They represent the  13 highest mass load coming out of those watersheds.  14 The final point I'd like to make is related to  15 the influence of imported water and surface water on  16 groundwater quality. As Dr. Welch indicated and also  17 George Wilkins, 90 percent of the county's water demand  18 is met by importing water from outside of the region.  19 The weighted average TDS concentration of all  20 water supplies in the San Diego county water service  21 area averaged approximately 510 milligrams per liter  22 during 2001. The historic average from 1974 to 1979 was  23 approximately 590 milligrams per liter. Both of these  24 averages are well above the basin plan objectives  25 already.</p>	<p style="text-align: right;">Page 44</p> <p>1 My comments today are intended to follow on  2 those of Mr. Welch and Mr. Keith. They will be  3 considerably shorter. They will address a few of the  4 practical implications of proceeding with the proposed  5 addition of 11 listings for total dissolved solids in  6 the 2002 303(d) list for the San Diego region. If the  7 state board supports these proposed listings, the  8 potential impacts to local water use and water supplies  9 are significant.  10 The San Diego region is a desert. Imported  11 water's been our dominant source of water for more than  12 50 years. Today approximately 90 percent of the supply  13 is imported. Imported water supplied by the San Diego  14 County Water Authority provides most of the water that  15 is required for municipal, agricultural and industrial  16 applications throughout through the county.  17 Water from the Colorado River is the primary  18 source of this supply. Over the past 20 years TDS  19 concentrations in Colorado River water have averaged  20 approximately 700 milligrams per liter. The U.S. Bureau  21 of Reclamation estimates there is about a 61 probability  22 that the TDS concentrations in the Colorado River will  23 exceed 800 milligrams per liter by 2015.  24 It's crucial that the state board understands  25 that to achieve target water quality improvements the</p>
<p style="text-align: right;">Page 43</p> <p>1 The problem is when these waters are used in  2 any kind of irrigation process, the effect of  3 evaporative concentration automatically increases the  4 TDS concentration of that water going in.  5 Well, that water either infiltrates into the  6 groundwater basins that recharge the rivers or it runs  7 off the surface, direct runoff into the streams.  8 Should the proposed listings for TDS be upheld  9 and the TMDL process be invoked, the logical conclusion  10 of the listings are that the potential water supplies  11 for the region would be severely restricted because of  12 natural hydrodynamic circumstances that exist in the  13 region.  14 For these reasons, we respectfully request that  15 the San Diego county water resources not be included on  16 the proposed 303(d) list as being water quality limited  17 due to TDS, chloride and sulfate. Instead we are  18 proposing that the basin plan objectives be carefully  19 evaluated in a manner so that they are consistent with  20 the region's natural hydrodynamic factors. Thank you.  21 MR. SILVA: John Van Rhyn?  22 MR. VAN RHYN: Good morning. My name is John  23 Van Rhyn. I am with the County of San Diego in our  24 water quality program. My address is 1255 Imperial  25 Avenue, San Diego.</p>	<p style="text-align: right;">Page 45</p> <p>1 TMDL process will ultimately have to focus on reducing  2 dissolved mineral loadings of imported water.  3 Because of the variety of the physical and  4 environmental and economic factors, it's neither  5 practical or achievable to reduce these concentrations  6 by capturing and treating surface runoff or by piping  7 these waters to the ocean for disposal.  8 Because of the dominant role that imported  9 water plays on San Diego region salt loads and the  10 interchange between ground and surface waters, there's  11 really only three possible strategies for achieving  12 meaningful TDS reduction in our surface waters.  13 The first would be to prohibit or significantly  14 restrict the use of the imported water for landscaping,  15 agricultural irrigation or other uses. This is not  16 practical, not economical, not achievable.  17 The second of these would be to improve the TDS  18 concentration in the water supply through  19 demineralization. This is also not practical or  20 economical. In addition to doubling the cost of water,  21 demineralization would create a need to dispose of large  22 quantities of brine.  23 The last of these options would be to improve  24 the TDS concentrations by decreasing the amount of  25 Colorado River water transmitted to San Diego County and</p>

<p style="text-align: right;">Page 46</p> <p>1 increasing the amount of state water project supply 2 water delivered to the county. 3 As with the previous options this would be 4 neither practical nor something over which we could 5 really exercise any control locally. 6 Assuming for the moment that any of these 7 strategies are technically or economically feasible it's 8 further necessary to point out that they would not 9 result in meaningful enhancements to beneficial use 10 attainment. 11 No evidence has been put forward to demonstrate 12 that existing TDS concentrations in receiving waters 13 prevent or deter the attainment of existing beneficial 14 uses. Currently the proposed listings are based solely 15 on the attainment of antiquated water quality 16 objectives. 17 However, existing basin plan TDS objectives do 18 not represent any significant water quality threshold 19 which if exceeded would deter or significantly affect 20 the use of local waters for municipal or agricultural 21 uses. 22 If the goal of the 303(d) and TMDL process is 23 to protect the beneficial uses of receiving waters then 24 these proposed listings are misdirected. In fact, it's 25 likely that they will have the opposite effect desired.</p>	<p style="text-align: right;">Page 48</p> <p>1 is lacking in scientific assessment. 2 The reports used to determine if beach segments 3 are water quality limited specify the number of days per 4 year that a beach segment had known exceedances of 5 applicable bacterial standards as indicated by beach 6 postings or closures. 7 The regional water quality control board did 8 not differentiate between the effects of sewage spills 9 and the effects of chronic indicator exceedances on 10 coastal beaches. Three segments -- San Mateo Creek 11 outlet, Bermuda Avenue/Ocean Beach and Kellogg Street 12 Beach -- are proposed for inclusion on the 2002 303(d) 13 list. 14 These are proposed new segment additions to the 15 1998 303(d) listed hydrologic units. The 303(d) work 16 group obtained and analyzed monitoring data for 17 bacterial indicators from the county of San Diego 18 department of environmental health from 1999 to present. 19 This monitoring data was then represented 20 graphically for each beach to visually identify trends 21 and exceedances of water quality standards. Known dates 22 of sewage spill incidents were also identified on each 23 graph and the graphs and monitoring data are included in 24 the submitted issues paper. 25 San Mateo Creek outlet is an excellent example</p>
<p style="text-align: right;">Page 47</p> <p>1 Rather than resulting in enhancement of beneficial uses, 2 these listings will result in TMDL's that in turn can 3 only lead to significant water use restrictions, water 4 supply impacts and economic impacts. 5 Availability and beneficial use of San Diego 6 County water supplies would be reduced by the proposed 7 303(d) listing, not increased. 8 To summarize, we again respectfully request 9 that the San Diego County water sources not be included 10 on the proposed 303(d) as being water quality limited 11 due to TDS. And while the intention of staff in 12 proposing these listings is laudable the cure in this 13 case would be worse than the disease. Thank you. 14 MR. SILVA: Thank you. 15 Sheri McPherson? 16 MS. MC PHERSON: Good morning. I'm Sheri 17 McPherson. I'm with the County of San Diego department 18 of environmental health and the water quality program. 19 I'm speaking today on behalf of the San Diego 20 County regional 303(d) work group about their concern 21 that beach segments are being inappropriately listed on 22 the 303(d) list. 23 In addition the 303(d) work group has concluded 24 that the San Diego regional water quality control board 25 use of their annual beach closure and advisory reports</p>	<p style="text-align: right;">Page 49</p> <p>1 of how misleading the use of annual beach closure 2 advisory reports can be. This beach segment is listed 3 for 15 days posted during 2000. These posting days 4 occurred March 6 to March 21st and are attributed to a 5 sewage spill caused by a power failure. The monitoring 6 data collected during this time exceeded water quality 7 objectives 15 times from March 7 to March 15. The 8 length of time the beach segment remained posted was not 9 only affected by exceedances but by sampling times, 10 method results times, and staff availability. 11 When monitoring data from 1999 through 2001 are 12 reviewed, there are no other exceedances of water 13 quality objectives outside the before-mentioned time 14 frame. The monitoring data intake that this was a one 15 time event and not a chronic problem. 16 San Diego county area beaches are some of the 17 most scenic and heavily used in the state and vital to 18 the region's economy. It is critical that the health of 19 these beaches be assessed in a scientifically valid 20 manner so appropriate decisions can be made regarding 21 watershed management and human health risks. 22 Sewage spills are a one-time point source event 23 best addressed under other regulatory activity, not the 24 303(d) listing process. Beach closures and advisory 25 reports are not an appropriate basis for listing.</p>

<p style="text-align: right;">Page 50</p> <p>1 Instead actual bacterial indicator data should be used  2 to make decisions. Based upon an assessment of this  3 data the 303(d) work group does not believe that San  4 Mateo Creek outlet, Bermuda Avenue Beach and Kellogg  5 Street Beach belong in the Section 303(d) list and  6 request these locations be delisted.  7 In the future the San Diego regional water  8 quality control board should review the actual  9 monitoring data, collect this data, correlate this data  10 with the annual beach closure advisory reports to  11 determine the actual indicator exceedances and the true  12 nature of bacteriological problems.  13 In addition we are going to submit some more  14 data regarding 1998 listings that has been corrected  15 from 1999 to present time with the extended date. Thank  16 you.  17 MR. SILVA: Lisa Kay?  18 MS. KAY: Good morning. I am Lisa Kay,  19 representing the 303(d) work group for the San Diego  20 region. I am with MEC Analytical Systems, 2433 Impala  21 Drive, Carlsbad, California 92008. And I am here to  22 speak primarily about our concern with the listing of  23 Agua Hedionda Creek for diazinon.  24 This listing was based on six pieces of data  25 collected from 1998 through 2000 and the regional board</p>	<p style="text-align: right;">Page 52</p> <p>1 in the quantitation between the two columns in the GC.  2 What does this mean?  3 Analytical methodology requires, the EPA method  4 requires, that two columns be used to avoid a false  5 positive analysis and the dual columns require that the  6 amylase ablate at different times on the chromatographic  7 columns. So one column would have a peak at one point  8 representing diazinon and the second column would have a  9 peak at yet another point representing diazinon.  10 For these data points, there was greater than  11 25 percent difference between the quantitation in the  12 primary and secondary columns. The EPA method  13 recommends that this be flagged and the data be  14 qualified. So those quantitations are not only  15 estimates, but also don't meet the EPA method required  16 quality assurance guidelines.  17 So of the six data points that were assessed,  18 two were non-detect, four had reporting below the  19 detection limit, were qualified as estimates, and  20 further qualified as having QA issues with the  21 difference between the columns. That leaves one data  22 point that's acceptable that doesn't have QA issues, and  23 this was reported as non-detect.  24 Further, there was no data that was  25 evaluated -- and apparently perhaps unavailable -- to</p>
<p style="text-align: right;">Page 51</p> <p>1 in their staff report has identified delisting factors  2 as including faulty data and defined faulty data as  3 including, but not limited to, improper QA QC procedures  4 or limitations relating to analytical methods that might  5 lead to improper conclusion regarding the water quality  6 status of a waterbody.  7 First of all, we all know that diazinon is  8 being phased out. But, more importantly, these six  9 sample points collected and evaluated by the regional  10 board, of the six points five of the points are defined  11 as -- what we define as false data, having QA problems.  12 All of data collected was analyzed using a GC  13 method for the phosphorus detector. And to understand  14 how the data is faulty you first have to understand how  15 the methodology works.  16 The analytical method achieved in that time  17 period from 1998 to 2000 a detection limit of .5 parts  18 per billion. The water quality criteria that defined as  19 being exceeded is .09 parts per billion.  20 Some of the data that's reported, three  21 points -- four points, in fact -- were reported at below  22 the detection limit and flagged in the data report as  23 estimated values. Further, these estimated values also  24 had some quality assurance issues related to them.  25 The quality assurance issues were a difference</p>	<p style="text-align: right;">Page 53</p> <p>1 indicate invertebrate community impacts or aquatic  2 toxicity. That was not assessed as a part of the  3 listing.  4 Now, the San Diego County is currently  5 monitoring this site, will continue to monitor the site,  6 not only for diazinon but also for toxicity and upstream  7 in the watershed for invertebrate community impact.  8 We recommend this be removed from the list  9 until additional data can be gathered to support a  10 listing if it is warranted by science.  11 MR. SILVA: Thank you.  12 Rosanna Lacarra.  13 THE WITNESS: Good morning. My name is Rosanna  14 Lacarra. I'm with the City of Carlsbad. I represent  15 the San Diego regional 303(d) work group. Address is  16 405 Oak Avenue in Carlsbad 92008.  17 I'm here this morning to cover a few points  18 regarding the listing in San Diego County watersheds for  19 bacteria, phosphorus and diazinon. You've heard some  20 comments from my colleagues on bacteria and diazinon.  21 My comments are more general.  22 The concerns and issues that the work group has  23 identified are the need for a weight of evidence  24 approach to the listings in San Diego County, the  25 importance of a scientifically-based analysis of the</p>

<p style="text-align: right;">Page 54</p> <p>1 data when listing for water quality limited conditions,  2 and, thirdly, we have concerns over the lack of a  3 comprehensive assessment of the data that would include  4 an examination of the required quality control and  5 assurance protocols followed by a statistical analysis  6 to validate the data sets as being comprehensive and  7 then applying it to determine the impairments.  8 Also we have concerns over a review of spatial  9 and temporal data to identify any gaps before listing  10 any waterbodies. Examples of these things being  11 overseen by regional board are the bacteria issues  12 mentioned for San Mateo Creek outlet, Bermuda Avenue and  13 Kellogg Street Beach closures where management tools  14 such as precautionary beach postings or closures from  15 known points for sewage spills are considered when the  16 analytical data for those same events does not  17 demonstrate a continuing problem in the area.  18 Another example is listings for phosphorus for  19 Santa Margarita River and the lower San Diego River,  20 which should be deleted from the proposed listing and  21 then Cloverdale Creek and upper Lake Hodges that is  22 recommended for the watch list. One of my colleagues  23 will be speaking to that phosphorus data.  24 And, lastly, you just heard Lisa Kay mention  25 Diazinon for Agua Hedionda Creek. We recommend it be</p>	<p style="text-align: right;">Page 56</p> <p>1 submitted to the regional board? Was that submitted and  2 it's in the record?  3 MS. LACARRA: Yes. It was submitted earlier  4 this month.  5 MR. WILSON: Thank you.  6 MR. SILVA: Thank you.  7 THE WITNESS: Good morning. I am Jack Miller  8 with the County of San Diego. I am a program manager  9 for the water quality programs. And as many of the  10 other speakers I'm representing the San Diego regional  11 303(d) work group.  12 Many of the speakers have addressed all of our  13 comments. We have still to hear the phosphorus. In  14 sort of a summation I would just like to ask you to  15 consider some main points.  16 We agree that it is imperative to preserve our  17 beneficial uses. We believe it's critical that good  18 science be used in these listings. We agree with the  19 staff report that the factors to be assessed for each  20 listing include data quality and extent to which data  21 quality requirements are met, linkage between  22 measurements and beneficial use, utility of measure for  23 judging of standards are attained, spatial and temporal  24 representation, source of pollutants and availability of  25 alternative enforceable programs.</p>
<p style="text-align: right;">Page 55</p> <p>1 placed on the watch list until additional qualified data  2 and comprehensive reviews can be performed, and that's  3 already underway.  4 In conclusion our solutions and recommendations  5 for future 303(d) listings -- and I speak on behalf of  6 the San Diego regional 303(d) work group -- are simply  7 two: Requiring the proposed 2002 listing to meet the  8 guidelines proposed by the storm water quality task  9 force for impaired waterbodies work group in placing the  10 proposed waters on the watch list such that the storm  11 water co-permittees in San Diego and other interested  12 parties can apply a weight of evidence for the listings  13 using a comprehensive triad approach that considers  14 three items: Water quality objectives, chemical and  15 physical determinations, toxicity effects, and the  16 community alterations prior to listing.  17 And lastly I'd like to mention that the watch  18 list is an appropriate mechanism for waterbodies for  19 which the weight of evidence has not been yet  20 established. Thank you very much.  21 MR. SILVA: Thank you. Jack Miller?  22 MR. WILSON: Question, Mr. Silva?  23 MR. SILVA: Yes.  24 MR. WILSON: The last speaker and Miss Kay --  25 are the quality assurance information -- is that already</p>	<p style="text-align: right;">Page 57</p> <p>1 We -- as far as the bacteria, we ask that we  2 base it on monitoring data, not administrative actions  3 that the County takes in taking advisory -- posting  4 advisories or beach closures.  5 As far as the phosphorus, you will hear a  6 little bit more on that in a few minutes. Based on the  7 diazinon, QA QC. Again, good science. We ask for good  8 science. We don't oppose the listing. We ask for it to  9 be based on good science and data.  10 One other listing you haven't heard about is  11 the proposed listing of Forrester Creek for pH and we  12 believe it should not be pursued with the data that's  13 available. The reasons are the elevated pH readings  14 were taken at open exposed sections of concrete channel  15 during summertime field-screening activities.  16 Conditions such as high temperature,  17 photosynthesis and concrete conveyance drive up the pH  18 levels. In addition, field-screening data is subject to  19 variability and should not be used as a sole basis for  20 the 303(d) listing.  21 On behalf of the County of San Diego and San  22 Diego 303 regional work group we respectfully request  23 you consider the information and the recommendations  24 that we've all offered here verbally and our extensive  25 written comments as presented, and consider it for your</p>

<p style="text-align: right;">Page 58</p> <p>1 list. Thank you very much.</p> <p>2 MR. SILVA: Thank you.</p> <p>3 Larry McKenney?</p> <p>4 MR. MC KENNEY: Good morning. My name's Larry</p> <p>5 McKenney. I'm here representing the County of Orange.</p> <p>6 I work for the Public Facilities and Resources</p> <p>7 Department. I'm the watershed and coastal resources</p> <p>8 division manager. So I'm not from the San Diego 303(d)</p> <p>9 work group, I guess.</p> <p>10 I do have written comments that I'm going to</p> <p>11 submit today and I also want to point out that we did</p> <p>12 make written comments to the regional board and we've</p> <p>13 appended those to our more developed comments today.</p> <p>14 I also have comments with regard to both</p> <p>15 Region 9 and Region 8. I don't know -- did you want me</p> <p>16 to just do both of them together now?</p> <p>17 MR. SILVA: It's up to you. Can you do it in</p> <p>18 five minutes?</p> <p>19 MR. MC KENNEY: I'll try.</p> <p>20 As a general comment the County believes that</p> <p>21 the approach to listing this year should be extremely</p> <p>22 conservative. We know that the state is going to be</p> <p>23 embarking on a process of writing a new policy this</p> <p>24 year. We hope that that policy will be a forum to</p> <p>25 address a lot of the concerns about process, data</p>	<p style="text-align: right;">Page 60</p> <p>1 in South Orange County.</p> <p>2 The problem there is that we're using total</p> <p>3 phosphorus numbers. We think it would be more</p> <p>4 appropriate from a -- with respect to actual effects on</p> <p>5 beneficial use to look at dry season flows and not</p> <p>6 include wet weather data, because it's skewed by</p> <p>7 sediments lost and the phosphorus binding the sediment.</p> <p>8 We lay out in our comments an alternative</p> <p>9 proposal for evaluating impairment based on phosphorus</p> <p>10 which we think is a better approach and we also</p> <p>11 recommend that those waterbodies that I just named not</p> <p>12 be listed for phosphorus this year on that basis.</p> <p>13 We're also presented, as outlined in our</p> <p>14 written comments, that Dana Point Harbor not be listed</p> <p>15 for phosphorus. We believe that the proposed listing --</p> <p>16 excuse me -- for copper. We think that the copper</p> <p>17 listing proposed for Dana Point Harbor is based on</p> <p>18 misrepresented sediment data.</p> <p>19 And I also wanted to make a comment about the</p> <p>20 proposed listing for San Onofre and San Mateo Creeks,</p> <p>21 the beaches there, as already addressed earlier. Just</p> <p>22 wanted to affirm that it doesn't seem like good public</p> <p>23 policy to list those beaches and force TMDL process when</p> <p>24 the problem is based on a single sewage spill.</p> <p>25 With regards to Region 8 waterbodies, the most</p>
<p style="text-align: right;">Page 59</p> <p>1 standards, quality control. And in light of that and</p> <p>2 the existing backlog of TMDL's, it seems appropriate</p> <p>3 that the state should be extremely conservative on</p> <p>4 adding new listings of waterbodies this year. So that's</p> <p>5 a general comment.</p> <p>6 The second general comment I'd like to make is</p> <p>7 that the County of Orange supports the idea of a watch</p> <p>8 list. Particular comments on waterbodies. We have a</p> <p>9 recurring concern about bacterial standards. This</p> <p>10 applies to several waterbodies in Orange County,</p> <p>11 including Aliso Creek and Dana Point Harbor, for</p> <p>12 example, where we have a variety of standards that are</p> <p>13 being used and the EPA is recommending that we use</p> <p>14 enterococcus. We're using total coliform now.</p> <p>15 We just think standards ought to be clarified</p> <p>16 overall before we go back and list any of those</p> <p>17 waterbodies as being impaired because of bacteria or</p> <p>18 enterococci.</p> <p>19 Particularly in Aliso Creek there is a proposed</p> <p>20 listing for enterococcus and there is no standards for</p> <p>21 enterococcus there right now. So that doesn't seem</p> <p>22 appropriate.</p> <p>23 There is another recurring standards problem</p> <p>24 and that has to do with phosphorus, particularly in</p> <p>25 Aliso Creek and in Prima and Segunda Deshecha watersheds</p>	<p style="text-align: right;">Page 61</p> <p>1 important of those to us to comment on today is the</p> <p>2 proposed listings for Santa Ana Delhi Channel. And</p> <p>3 there are a variety of these waterbodies, small</p> <p>4 waterbodies that are basically flood control channels,</p> <p>5 in Region 8. Santa Ana Delhi is the poster child for</p> <p>6 this issue.</p> <p>7 The problem there is that there's a real debate</p> <p>8 about whether there should be beneficial uses designated</p> <p>9 in these flood control channels. There are not</p> <p>10 beneficial uses designated now to support a listing, and</p> <p>11 to already try and do this is to put the cart before the</p> <p>12 horse. So we feel very strongly that the beneficial use</p> <p>13 designation process should happen first and it is on the</p> <p>14 Region 8 triennial review task list and then after the</p> <p>15 beneficial use has been designated, the public hearing</p> <p>16 process, we can go back and reconsider whether there's</p> <p>17 impairment.</p> <p>18 And with that I'll submit my written comments</p> <p>19 and I thank you for your time and for allowing me to</p> <p>20 move ahead.</p> <p>21 MR. SILVA: Thank you.</p> <p>22 MR. LOPEZ: Good morning. My name is Cesar</p> <p>23 Lopez. I am Senior Water Resources Specialist with the</p> <p>24 San Diego County Water Authority.</p> <p>25 I'm here today in support of the San Diego</p>



<p style="text-align: right;">Page 62</p> <p>1 County regional 303(d) work group. I'm not with them  2 but I feel that I like to support them. I'd like to  3 support and echo the concerns of the work group and  4 which is the concerns in the proposed 303(d) listings of  5 San Diego County waterbodies as being water quality  6 limited, most specifically through the TDS.  7 Again, I would like to reiterate that the San  8 Diego County is highly dependent on imported water which  9 is predominantly Colorado River water. And as we all  10 know, it is relatively high in TDS.  11 Currently we are enjoying a good quality water  12 being at about 500 milligrams per liter with the  13 Metropolitan Water District's commitment to keep it at  14 that level. And they're able to achieve that by  15 blending Colorado River water 75 percent to 25 percent  16 Northern California water. That is achievable right  17 now.  18 As I said, we -- normally Colorado river TDS  19 levels range is at about 600. I believe it's about 600  20 right now. Colorado River water TDS has historically  21 been around 700 to 800 milligrams per liter, and as a  22 result the local supplies, the water supplies delivered  23 to San Diego, reaches levels at around 600 milligrams  24 per liter. That is way above the 500 milligrams per  25 liter limit for surface water.</p>	<p style="text-align: right;">Page 64</p> <p>1 Authority, 610 West Fifth Avenue in Escondido. I would  2 also like to address basin plan TDS objectives of 500  3 milligrams per liter for surface waters and the effects  4 that that level will have on the operations and  5 maintenance of the water delivery systems throughout the  6 San Diego region.  7 Imported waters in San Diego County account for  8 about 90 percent of our water supplies. These sources  9 are from the Colorado River water, which currently has a  10 TDS level of about 585 parts per liter and the state  11 project water from Northern California, with a current  12 TDS level of about 300 milligrams per liter.  13 Both for water availability and other water  14 quality considerations, San Diego routinely receives a  15 blend of about 75 percent Colorado River water and  16 25 percent Northern California water, with TDS levels of  17 approximately 500 to 550 milligrams per liter.  18 There have been extended periods in the past  19 where only Colorado River water was available and this  20 has historically had levels of up to 650 to 700  21 milligrams per liter.  22 With all this said, water distribution systems  23 throughout the County strive to make their systems safe  24 and reliable. Routine maintenance of these systems  25 require draining and flushing pipelines, reservoirs, and</p>
<p style="text-align: right;">Page 63</p> <p>1 That will definitely hurt San Diego region's  2 attempt to maximize reuse and beneficial reuse. San  3 Diego County Water Authority is promoting reuse with  4 recycled water. Recycled water is also high in TDS,  5 considering how high the local supplies is, and once the  6 local water supply increase, recycled water will also  7 increase with the same increment, same levels.  8 Another projects that may be impacted by this  9 future regulation is the development of groundwater  10 resources. San Diego County Water Authority is  11 dedicated and has a goal of developing local supplies to  12 make it more reliable and be less dependent on imported  13 water supplies.  14 The development of this local resources or  15 local supplies are key elements to the San Diego County  16 Water Authority's long-term goal and in its master  17 plans.  18 So we respectfully would like to consider --  19 the board to consider the comments and recommendations  20 of the work group. Thank you.  21  22 MR. SILVA: Thank you.  23 Joe Wegand?  24 MR. WEGAND: Good morning. My name is Joe  25 Wegand and I am representing the San Diego County Water</p>	<p style="text-align: right;">Page 65</p> <p>1 other facilities, to inspect and maintain water quality  2 and to perform repairs.  3 The 500 milligram TDS objective would severely  4 impact or eliminate our ability to perform these tasks  5 and affect the critical functionality of the County's  6 water system.  7 San Diego County Water Authority respectfully  8 request that regulations on TDS be set to protect the  9 environment and also allow us to maintain our critical  10 infrastructure to San Diego's 2.8 million people. Thank  11 you.  12 MR. SILVA: Thank you.  13 Scott Huth?  14 MR. HUTH: Good morning. I'm Scott Huth,  15 Public Services Director for the City of Coronado. You  16 need an address?  17 MR. SILVA: We got it here.  18 MR. HUTH: Okay. I'm here to speak on behalf  19 of City of the Coronado on three issues. Actually  20 started as two and I heard a third one with the earlier  21 speakers dealing with South Bay.  22 We're happy to be here and we are in support  23 the regional and the state board's recommend to delist  24 Coronado's central beach or main beach.  25 Coronado has 28 miles of coastline and this one</p>

<p style="text-align: right;">Page 66</p> <p>1 particular area is a one-mile stretch of coastline which  2 is probably the most extensively monitored coastline in  3 San Diego County in term of water quality and I think we  4 provided sufficient information over a two-year period  5 to demonstrate that.</p> <p>6 The listing came about as part of an  7 operational dewatering program that we had that we since  8 discontinued 30 months ago and we continue to sample the  9 water and show that the water is clean off the coastline  10 in that particular area.</p> <p>11 The second item is dealing with the new  12 proposed designation of San Diego Bay Coronado. What we  13 prefer is that the designation be defined in the actual  14 area, which is Tidelands Park. The extent of impairment  15 is two-tenths of a mile as opposed to four-tenths of a  16 mile. That's important to us to have that really well  17 defined.</p> <p>18 We have 20 miles of coastline on the San Diego  19 Bay and we don't want to have a misconception that all  20 20 miles of San Diego Bay in Coronado city limits should  21 be on a listing. So I want to clear that up today.</p> <p>22 The third item is the concern about South Bay.  23 And I didn't hear a lot of specificity about that, so  24 since Coronado has a significant amount of coastline in  25 the South Bay area, I do know that there is no data</p>	<p style="text-align: right;">Page 68</p> <p>1 I would like to first mention that the state  2 board staff report lists a series of 13 criteria for  3 judging the appropriateness of any particular listing.  4 These criteria include things like the spatial and  5 temporal representativeness of data sets, data quality  6 and the availability of alternative enforceable programs  7 for attaining water standards.</p> <p>8 My comment will be directed towards these  9 judging criterias as they appear in the state board's  10 staff report.</p> <p>11 The upper Santa Margarita River and the lower  12 San Diego River listings both ignore the existence of an  13 alternative enforceable strategy for biostimulatory  14 substances that is outlined in chapter four of the San  15 Diego basin plan.</p> <p>16 There is in fact in the basin plan an  17 alternative enforceable program developed by the  18 regional board and outlined in chapter four in place for  19 both the upper Santa Margarita River and the lower San  20 Diego River. We believe that this alone is enough  21 justification for deleting these listings.</p> <p>22 I'd also like to point out that we received  23 some additional data from the Rancho California Water  24 District and we'll be submitting that data --  25 actually we already submitted that data -- and that data</p>
<p style="text-align: right;">Page 67</p> <p>1 supporting a listing in our city limits in the coastline  2 in the South Bay Area and I think that the issue that's  3 being raised is really around the power plant as opposed  4 to Coronado's side of the South Bay. So I wanted to  5 make that clear too for the board. Thank you.</p> <p>6 MR. SILVA: Thank you.</p> <p>7 That's all the cards I have. Is there anybody  8 else that wishes to speak on any item on Region 9?</p> <p>9 MR. KLEIN: Eric Klein.</p> <p>10 MR. SILVA: Did you fill out a card?</p> <p>11 MR. KLEIN: I filled one out, but --</p> <p>12 My name's Eric Klein. I'm with the San Diego  13 County Department of Environmental Health, and I'm  14 sorry, Mr. Silva, but I also am with the San Diego  15 regional 303 work group.</p> <p>16 I would like to direct my comments to four  17 proposed listings for elevated total phosphorus in San  18 Diego County. The waterbodies in question are the upper  19 Santa Margarita River, the lower San Diego River,  20 Cloverdale Creek and Lake Hodges.</p> <p>21 We have done quite a bit of study of the staff  22 report and looked at the water quality data. We've  23 talked to staff, we've reviewed the basin plan very  24 carefully and we've concluded that there are problems  25 with each of these four proposed listings.</p>	<p style="text-align: right;">Page 69</p> <p>1 indicated that total phosphorus levels at two downstream  2 stations on -- within the proposed listing segment on  3 the Santa Margarita River the data showed that it was  4 actually within the .1 water quality goal for total  5 phosphorus. The bottom line is is that these two  6 listings in particular should be deleted from the  7 proposed list.</p> <p>8 Far as Lake Hodges and Cloverdale Creek, after  9 studying the proposed listings we believe that the Lake  10 Hodges data is not a spatially representative data set  11 and the Cloverdale Creek data set does not meet the  12 requirements of a temporally representative data set.</p> <p>13 The Cloverdale Creek data set is also very  14 small, only eight observations for the entire set. So  15 there are fundamental serious flaws in the data set.</p> <p>16 We are also very concerned that the use of  17 total phosphorus by itself is a very poor measurement of  18 beneficial use impairment. Without going into detail we  19 know there are many researchers who have questioned the  20 use of a .1 milligram per liter standard in flowing  21 waterbodies. This is essentially a one size fits all  22 approach and it's not appropriate.</p> <p>23 Each waterbody's different and should be judged  24 differently. What we would suggest is that in  25 combination with measures like total phosphorus you also</p>

<p style="text-align: right;">Page 70</p> <p>1 would use things like orthophosphate, the presence or  2 absence of algae, excessive fluctuations of dissolved  3 oxygen, other measures that could corroborate with  4 elevated total phosphorus that would indicate that there  5 is a actual beneficial use impairment. This was not  6 done with any of these listings.  7 I would also like to briefly mention that we  8 would like to see the regional board use a more rigorous  9 statistical analysis approach. The methods used in the  10 development of these listings are oversimplified and  11 basically they are lacking.  12 In summary, the proposed listings for the upper  13 Santa Margarita River and the lower San Diego River  14 should be deleted because there is an existing  15 alternative enforceable water quality compliance program  16 for these two waterbodies that is clearly outlined in  17 the basin plan.  18 We respectfully ask state board staff to please  19 read the San Diego basin plan, chapter four, pages 4.36  20 through 4.38 before deciding whether to adopt these  21 listings. TMDL's are appropriate only when other  22 regulatory compliance measures are shown to be  23 ineffective and that is clearly not the case here.  24 Lake Hodges and Cloverdale Creek should be  25 placed on the 303(d) watch list and re-evaluated when</p>	<p style="text-align: right;">Page 72</p> <p>1 the fire over the 303(d) listings and those issues and  2 rightfully so. In response the listing process was  3 necessarily rushed to avoid litigation. In doing so it  4 appears to me that a significant number of receiving  5 water reaches may have been nominated based on limited  6 anecdotal information or insufficient data.  7 It can be argued that it is better to be  8 environmentally conservative and list on the least  9 amount of evidence. On the other hand, it can be  10 equally argued that the list should be based on  11 reasonable information and objective standards.  12 The regulated community has been awakened to  13 the necessity of insuring clean receiving waters and  14 that's been mentioned here a number of times today.  15 Indeed, the efforts that have been undertaken to date  16 would never have been contemplated a couple of years  17 ago.  18 Given that, it seems reasonable to back up  19 perhaps a half a step and get the 303(d) listings  20 process right. Establishing that watch list allows this  21 to be done. But the watch list would need to have the  22 following attributes. It would place questionable  23 reaches of referring waters on notice for approximately  24 two years or until the time of the new 303(d) listings.  25 This would give the regulated parties time to provide</p>
<p style="text-align: right;">Page 71</p> <p>1 representative data set of adequate size can be  2 developed.  3 Thank you for the opportunity to provide these  4 comments and I hope that the state board will give them  5 serious consideration. Thank you.  6 MR. SILVA: Thank you.  7 MR. WILSON: One question.  8 MR. SILVA: Sorry. Staff has a question.  9 MR. WILSON: Are you going to submit written  10 comments from the work group or have you submitted them?  11 MR. KLEIN: We submitted them. They were  12 submitted on the 16th.  13 MR. WILSON: Okay. Very good. Thank you.  14 Okay.  15 MR. SILVA: Last call for Region 9.  16 MR. BARNETT: Yes. Arthur Barnett. My name is  17 Arthur Barnett. I'm from MEC Analytical Systems, and  18 today I am actually representing myself even though I am  19 a member of that 303(d) work group, but also I've been  20 to public advisory groups and spent a lot of time  21 attending TAG's. And these comments relate to what I've  22 gleaned and gathered through all of those meetings and  23 having thought about the problem.  24 I'd like to speak in support of the watch list.  25 The environmentalists have held the regulatory feet to</p>	<p style="text-align: right;">Page 73</p> <p>1 sufficient data to determine whether a listing was  2 called for.  3 Now, we have heard in many other meetings that  4 the regulating bodies have said, well, why should we go  5 out and hang ourselves on our own petard, and the answer  6 is possibly in this third issue, and that is if  7 insufficient data were obtained in that two-year time  8 period then the waterbody would be listed by default.  9 That gives the impetus that's needed.  10 Establishing a watch list has the following  11 advantages: It provides the regulators an opportunity  12 to make the listing process systemic and objective. It  13 provides an opportunity to obtain sufficient relevant  14 data to determine whether a listing is necessary. If  15 the default listing step were included in the process,  16 it involves a strong impetus to obtain the relevant data  17 and that is a task that the regional board would  18 welcome, especially Region 9. Thank you.  19 MR. SILVA: Thank you.  20 Last call for Region 9.  21 Okay. Thank you for those people attending  22 from Region 7 and Region 9. We appreciate it.  23 We're going to take a break right now, ten  24 minutes. We'll come back at five till 11:00 and  25 continue with Region 4.</p>

<p style="text-align: right;">Page 74</p> <p>1 (Recess)</p> <p>2 MR. SILVA: We have got at least an hour and a</p> <p>3 half for Region 4. For those of you from Region 8, it</p> <p>4 might be more like two hours unless we take a ten-minute</p> <p>5 break for lunch and then come back.</p> <p>6 Okay. Why don't we go with Gerry Green.</p> <p>7 MR. GREEN: Thank you very much. My name is</p> <p>8 Gerry Green. I'm a senior civil engineer for the City</p> <p>9 of Downey. And I would like to speak to some of the</p> <p>10 changes that are going on.</p> <p>11 In particular Downey will be impacted by</p> <p>12 changes in regards to the Los Angeles River and San</p> <p>13 Gabriel River and metal concentrations, in particular</p> <p>14 aluminum, cadmium, copper and zinc.</p> <p>15 We think it is all appropriate that we continue</p> <p>16 to move forward with the 303(d) process but we are</p> <p>17 concerned at this particular application we have not</p> <p>18 done a sufficient job on both validating the data and</p> <p>19 making sure that the uses, beneficial uses, that we are</p> <p>20 trying to return to the watershed are appropriate in our</p> <p>21 area.</p> <p>22 In particular, we think that the reach</p> <p>23 designations are perhaps far too wide in our area,</p> <p>24 that -- we are concerned with San Gabriel River. We're</p> <p>25 essentially talking about a dry stream channel for at</p>	<p style="text-align: right;">Page 76</p> <p>1 the next listing cycle we will expect that these come</p> <p>2 off, because the violations are due to things that</p> <p>3 happen during our El Nino years of '97 and '98.</p> <p>4 And if you were to take a look at the fact</p> <p>5 sheet you would clearly see that the violation points</p> <p>6 are all in that period. Since then it's all been above</p> <p>7 the violations. I don't believe the 303(d) process is</p> <p>8 to be cycling things on and off the list based on</p> <p>9 unusual act of God events.</p> <p>10 I started to allude to use attainability</p> <p>11 analysis. Again we think that applying a warm water</p> <p>12 beneficial use to an area where there is no water eleven</p> <p>13 months out of the year is an inappropriate application.</p> <p>14 Perhaps there are parts of the reach where it would be</p> <p>15 applicable to put this in, but that should be handled at</p> <p>16 this stage not through some later clarification of the</p> <p>17 303(d) listing.</p> <p>18 If there's a question, a watch list is an</p> <p>19 appropriate place to put things. Personally I think</p> <p>20 that several of these items probably should not be</p> <p>21 listed at all; several of the others are reasonable to</p> <p>22 put on a watch list.</p> <p>23 We will be submitting further written comments</p> <p>24 later on that helps to support some of the statements</p> <p>25 I've made here.</p>
<p style="text-align: right;">Page 75</p> <p>1 least eleven months out of the year.</p> <p>2 The beneficial uses that have been identified</p> <p>3 include rare, warm and wild, warm water habitat. Eleven</p> <p>4 months of the year there is no water. As far as the</p> <p>5 rare, I think it is appropriate to help us to understand</p> <p>6 what animals, what creatures, we're trying to bring back</p> <p>7 into this area. That is something that I think could be</p> <p>8 added as a part of the 303(d) listing process to help us</p> <p>9 improve what is trying to be brought back.</p> <p>10 The science behind the listings, we are nervous</p> <p>11 in that we see data in the fact sheets that are</p> <p>12 variable. As an example, for copper in San Gabriel</p> <p>13 River, in one section it's indicated 62 percent of the</p> <p>14 observations are in violation and in another case it</p> <p>15 indicates 23, and we understand the county is doing a</p> <p>16 reanalysis and it comes down to 11 percent.</p> <p>17 It is important that this work be done</p> <p>18 carefully and correctly. Having things come on the list</p> <p>19 to be brought back off because of bad science does not</p> <p>20 help us. It is a diversion of our efforts instead of</p> <p>21 helping us to focus our efforts on getting the real</p> <p>22 problems off the list.</p> <p>23 On- and off-site work. I thought it was very</p> <p>24 surprising that in the fact sheets to go with several of</p> <p>25 these compounds the board specifically indicates during</p>	<p style="text-align: right;">Page 77</p> <p>1 One other concern I had was the criteria</p> <p>2 continuous concentration use. I am still trying to find</p> <p>3 out completely where its application comes from, but I</p> <p>4 understand that it was originally intended to mostly be</p> <p>5 directed at POTW's and industrial waste dischargers.</p> <p>6 And if you look at the table it very clearly</p> <p>7 runs from 25 up to 400 on the table. The person who</p> <p>8 produced that table clearly did not intend it to be</p> <p>9 extrapolated from 25 down to zero. From 25 to 400,</p> <p>10 25-unit increments, obviously one extra increment</p> <p>11 downward could easily have got him to the end of the</p> <p>12 table. He chose not to. But instead we now see it</p> <p>13 being used to be extrapolate right down to values of</p> <p>14 hardness of 1 in developing data, giving us criteria</p> <p>15 that are below the detection limit for copper.</p> <p>16 This does not help us. This is science that</p> <p>17 should be improved to give us the things we need to</p> <p>18 decide whether a problem should go on the 303(d) list</p> <p>19 and then how it should be eventually brought off and</p> <p>20 resolved.</p> <p>21 Thank you very much. I look forward to your</p> <p>22 findings and hopefully we'll all be well satisfied with</p> <p>23 them.</p> <p>24 MR. SILVA: Jacqueline Lambriches?</p> <p>25 MS. LAMBERTH: My daughter's just vocalized our</p>

<p style="text-align: right;">Page 78</p> <p>1 organization's opposition. My name is Jacqueline  2 Lambriches and I am in the community based organization  3 called Friends of the San Gabriel River and our address  4 is 3725 -- P.O. Box 3725 -- South El Monte 91733.  5 And I actually live in the San Gabriel River  6 watershed and we are opposing the moving of the San  7 Gabriel River estuary reach from the impairment listing  8 to the watch list.  9 And strongly supporting this is the city of  10 Seal Beach, their chamber of commerce as well their city  11 council members and they have monthly beach cleanups and  12 all sorts of the documentation to support this and they  13 did provide some of it initially when the listing  14 documentation was requested.  15 MR. SILVA: You have until June 15 if you want  16 to submit more comments.  17 MS. LAMBERTH: Some more comments or perhaps  18 city council resolution updates and things like that.  19 Thank you.  20 MR. SILVA: John Oropeza.  21 MR. ORPEZA: Good morning. My name is John  22 Oropeza, Public Works Director for the City of Bell  23 Gardens. Address, 8327 South Garfield Avenue, Bell  24 Gardens 90201.  25 Bell Gardens is a 2.3 square mile city with a</p>	<p style="text-align: right;">Page 80</p> <p>1 water being listed as impaired, especially for potential  2 uses that do not exist today and are not probable for  3 the future.  4 We want to support your staff's proposal for a  5 watch list. In reviewing the current 1998 303(d) list  6 it appears that we discharged into the Reach 2 of the  7 Los Angeles River and Reach 1 of the Rio Hondo River.  8 In addition to trash, both of these reaches are listed  9 for a number of specific pollutants and general  10 conditions.  11 We would like to see a detailed review of all  12 these listings so that we could better understand what  13 existing uses of the channels are actually impaired and  14 what data is supporting the listings.  15 A complete review of beneficial uses, water  16 quality objectives, and impairment could take time.  17 However, you could act soon to improve the situation by  18 moving all vague listings to the watch list for better  19 definition. For our area, this would include listings  20 for high coliform counts, nutrients, algae and scum,  21 foam. I would also suggest trash if the regional board  22 had not already adopted a TMDL for trash.  23 This would be a win-win for both the  24 environment and the taxpayers, as it would provide for  25 cleanup of the identified pollutants while saving the</p>
<p style="text-align: right;">Page 79</p> <p>1 population of approximately 49,000. We are tucked in  2 between the Los Angeles River and the Rio Hondo River  3 just south of the City of Commerce.  4 Bell Gardens is a mixed -- built-out mixed-use  5 community. Approximately 75 percent of the city is  6 residential with the remainder being a mix of commercial  7 and industrial uses. Our storm drains discharge into  8 the fenced concrete-lined flood control channels also  9 known as the L.A. River and the Rio Hondo, which also  10 drains into the Los Angeles River further south. Our  11 city has an aggressive litter abatement program. We  12 sweep our major arterials three times a week and all the  13 remaining streets weekly. We have dedicated maintenance  14 crews that follow behind the trash trucks to pick up  15 littler in streets and alleys within two days after  16 trash pick-up. So we're very aggressive in trying to  17 keep the streets clean and keeping storm drain washout  18 to a minimum.  19 Bell Gardens wants to do our fair share to help  20 clean up our waterways and prevent pollution. However,  21 we are concerned about spending our money wisely. In  22 the past we have not been too concerned nor paid very  23 much attention to 303(d) list because it didn't seem to  24 impact us directly. After adoption of the TMDL's we are  25 starting to understand the potential consequences of</p>	<p style="text-align: right;">Page 81</p> <p>1 taxpayers the expense of chasing down contaminants which  2 may or may not even exist in these subject waters or may  3 not be present in levels consistent or sufficient enough  4 to pose a threat to public health.  5 Thank you for the opportunity to speak today.  6 MR. SILVA: Ken Farfsing?  7 MR. FARFSING: Good morning, Member Silva. My  8 name's Ken Farfsing, City Manager for the City of Signal  9 Hill. Address is 2175 Cherry Avenue, Signal Hill 90806.  10 I also represent the Coalition for Practical  11 Regulation, a group of 44 Los Angeles County cities  12 devoted to working with the state on regional solutions  13 to storm water issues.  14 I want to thank the state board and the staff  15 for reviewing and analyzing the recommendations  16 submitted by the Region 4 board and their staff. The  17 state board appears to have made a good start at  18 scrutinizing the technical and scientific support that  19 the regional board relied upon for their listings and  20 delistings.  21 The National Research Council in their report  22 to Congress entitled "Assessing the TMDL Approach to  23 Water Quality Management" noted that "many waters on  24 state 303(d) lists were placed there without the benefit  25 of adequate water quality standards, data, or waterbody</p>

<p style="text-align: right;">Page 82</p> <p>1 assessment" and that there is "considerable uncertainty  2 about whether many of the waters placed on the 1998 list  3 are truly impaired" due to "legal, time and resource  4 pressures placed upon the states and EPA" to complete  5 the listings.</p> <p>6 The NRC stressed the importance of states  7 developing "appropriate use designations for waterbodies  8 in advance of assessment and refining these use  9 designations prior to TMDL development." This process  10 is not being followed in California. Many basin plans  11 have not been critically reassessed in a number of  12 years. The last comprehensive revision to the Los  13 Angeles basin plan was in 1994. Our outdated basin plan  14 has resulted in designating flood control channels for  15 fishing and swimming.</p> <p>16 In light of the NCR recommendations the state  17 board should consider mandating comprehensive reviews of  18 all basin plans as a means of insuring the integrity of  19 the 303(d) lists. Critical to the current revisions is  20 preparation of the new water quality control policy by  21 the state board. California needs to formally adopt a  22 listing policy that'll promote fairness and consistency.</p> <p>23 This policy should establish the requirements  24 for review of the entire listing process to assure that  25 listings are based on sound science. The policy should</p>	<p style="text-align: right;">Page 84</p> <p>1 must first tell you that I want to thank the state board  2 for devoting more resources to looking at the problems  3 of this 2002 list. I want to thank the board for  4 starting the process of developing technically sound and  5 scientifically valid list of impaired waterbodies. The  6 proposed watch list is a good start. Potential water  7 quality problems for which there is a lack of clear  8 definition or data to actually determine an impairment  9 should be placed on the pending or watch list.</p> <p>10 I'm not sure of the data supporting the  11 listing, but we want to thank you for the use of  12 dissolved cadmium, copper and zinc for Reach 1 of the  13 Los Angeles River instead of total metals.</p> <p>14 My specific concern is the Los Angeles River  15 Estuary. The estuary has several listings related to  16 historic uses of pesticides and lubricants. Among these  17 are lead, chlordane and DDT. These are listed because  18 of their presence in the sediments. Instead of being  19 listed we request that they be placed on a watch list  20 similar to PCB's.</p> <p>21 We believe it will be impossible to establish  22 valid TMDL's for legacy pollutants. Pollutants that  23 were discharged years ago and have since been banned  24 from use cannot be controlled by regulating current  25 storm water discharges. Perhaps the USEPA should be</p>
<p style="text-align: right;">Page 83</p> <p>1 indicate state board priorities such that limited public  2 resources can be devoted to working on the first  3 priorities operates first.</p> <p>4 The cities desire a 303(d) listing process and  5 303(d)lists that assure they are not wasting public  6 resources, that there is solid evidence to demonstrate  7 to our residents and businesses that new storm water  8 taxes and fees for water quality improvements are  9 justified and the cleanup measures are effective. Thank  10 you.</p> <p>11 MR. SILVA: Larry Forester?</p> <p>12 MR. FORESTER: Good morning, Board Members.  13 Larry Forester, City Council, City of Signal Hill, 2175  14 Cherry Avenue, 90806.</p> <p>15 As a major portion of our city drains through  16 Long Beach and into the Los Angeles River, we have  17 worked well with the county working on some areas of  18 major concern, one of those being working with our  19 Hamilton Bowl, which is a regional catch for the storm  20 water prior to going into the river.</p> <p>21 Recently an experimental design was placed in  22 that system and it's been proving to catch reasonably  23 well the trash for the trash TMDL.</p> <p>24 But now in this time frame I have some specific  25 concerns with the proposed list. But as an engineer, I</p>	<p style="text-align: right;">Page 85</p> <p>1 asked to deal with legacy listings through a separate  2 program.</p> <p>3 I thank you for your time and the permission to  4 be listened to.</p> <p>5 MR. SILVA: Thank you very much.</p> <p>6 Blane Frandsen?</p> <p>7 MR. FRANDSEN: Thank you. My name's Blane  8 Frandsen. I'm the Director of Public Works for the City  9 of Lawndale. Our city hall is located at 14717 Burin  10 Avenue in Lawndale, California. It's my privilege to  11 speak for the City of Lawndale today as a Public Works  12 Director.</p> <p>13 I would note the City of Lawndale is a small  14 city of approximately two square miles; however, we are  15 densely populated with about 32,000 citizens. Our storm  16 water drains primarily to the Dominguez Channel above  17 the -- above Vermont Avenue.</p> <p>18 The people of Lawndale and the local government  19 of Lawndale share the regional board's desire to improve  20 the water quality of our city and of our area and  21 particularly of the Dominguez Channel watershed. We  22 recognize the importance of controlling pollution from  23 storm water coming from our city and in working with  24 goals and policies and efforts within the city to  25 accomplish that.</p>

<p style="text-align: right;">Page 86</p> <p>1 First we would like to thank the regional board  2 staff for recommending putting the Dominguez Channel  3 Estuary on the watch list for chlordane, copper, PCB's  4 and other unknown pollutants.  5 We believe by putting these on the watch list  6 this will allow more data to be collected and to see  7 what are actually causing the problems within this  8 watershed area.  9 We know chlordane and PCB's are historical  10 pollutants, pollutants that are no longer in common use.  11 Putting them on the watch list we believe will allow  12 time to see if their concentrations will diminish over  13 time because of the discontinued use of these  14 substances.  15 If not, the state and regional board may have  16 to come up with other alternatives or other ways to  17 handle these historical pollutants. It would be very  18 difficult to accomplish anything by setting loads or  19 waste loads if these things are not being currently used  20 and they are coming from residues in the sands and in  21 the sediments that are already within the basin.  22 Also we have concern with the designation of a  23 high coliform count. We note this as a high priority in  24 the current TMDL listings for the Dominguez Channel,  25 both for the estuary area and also for the area north of</p>	<p style="text-align: right;">Page 88</p> <p>1 limited. We believe that they must be focused on  2 obtaining the highest and best results from the limited  3 funds that we have. We believe in a scientific based  4 consideration for setting the list, and the 303 listing  5 for the Dominguez Channel area is very important and we  6 support that. Thank you.  7 MR. SILVA: Thank you.  8 Mark Pumford?  9 MR. PUMFORD: Good morning. Mark Pumford, City  10 of Oxnard, 6001 South Perkins Road, Oxnard, California  11 93033.  12 We have a simple request today. We are seeking  13 the delisting of Mandalay Beach under 303(d) for beach  14 closure. We have provided written comments supporting  15 the fact that there have been no beach closures since  16 1996, well beyond the listing trigger of a closure  17 within three-years span.  18 Also we and the county have provided  19 information showing that the beach is not triggered for  20 AB 411 exceedances. All is not rosy in Ventura Coastal  21 region of California, and we would like to focus our  22 resources on the true problem areas and Mandalay Beach  23 is not one of them.  24 Thank you for consideration of this request and  25 the opportunity to comment today.</p>
<p style="text-align: right;">Page 87</p> <p>1 Vermont Avenue where our city is located. We believe  2 that this is inappropriate.  3 The Dominguez Channel is not a swimming hole,  4 is not a recreational facility. It is a flood control  5 channel. There are no legal recreational uses along the  6 channel itself. So it is unclear as to what, if any, is  7 being impaired by coliform counts within that area.  8 In the 1998 303 list, high coliform count along  9 the Dominguez Channel was designated as very low  10 priority for TMDL consideration. If it has that high  11 priority listing this year we don't understand why that  12 is being considered. We believe that it should at most  13 be considered a low priority, continuing as it had been  14 considered historically.  15 Furthermore we could question what a high  16 coliform count measures. It is not clearly defined what  17 the actual pollutant is. And we believe that the 303(d)  18 list should be more focused with regard to human  19 pathogens using some other measure than the high  20 coliform count measure.  21 As I said, the City of Lawndale supports  22 reasonable science-based controls to mitigate pollution  23 from storm water. I note that our funding with regards  24 to a small city of our base for all infrastructure  25 measures and for use with regard to this program are</p>	<p style="text-align: right;">Page 89</p> <p>1 MR. SILVA: Thank you.  2 Dr. Randall Orton?  3 MR. ORTON: Good morning, Mr. Silva. My name  4 is Dr. Randall Orton. I'm representing the Las Virgenes  5 Municipal Water District at 4232 Las Virgenes Road in  6 Calabasas.  7 MR. WILSON: Can we have your name again,  8 please?  9 MR. ORTON: Randall Orton.  10 MR. WILSON: Thank you.  11 MR. ORTON: The Las Virgenes Municipal Water  12 District is a combined utility providing drinking water  13 and waste water services and composting services to  14 approximately 80,000 residents in the western Los  15 Angeles County, primarily the cities of Westlake,  16 Calabasas, Hidden Hills and Agoura Hills. We've also  17 submitted our technical comments in writing. I think  18 I'll focus today on some policy issues.  19 I'd like to begin by stating overall the city  20 is very pleased on the state's efforts with this round.  21 The difference between this round and previous rounds  22 are quite striking.  23 For example, it has much greater data  24 traceability. There's been comments about people who  25 have seen data and they say this doesn't agree with us;</p>

<p style="text-align: right;">Page 90</p> <p>1 we don't agree with this data. Their ability to do that  2 rests on their ability to see the data the list is based  3 on. And I'd like to commend Mr. Wilson and his staff  4 for taking extra pains to make sure the data is  5 traceable.</p> <p>6 We support watch lists. You've heard this a  7 lot today, so I am going to skip over a bunch of  8 comments and get to one recommendation that we have with  9 watch lists. They seem to solve a lot of problems, but  10 there is a valid criticism that a watch list is a recipe  11 for inaction.</p> <p>12 Too many things get put on watch list and not  13 come off. If that proves to be a stumbling block for  14 the state we would recommend you incorporate a sunset  15 clause into a watch list so if something stays on the  16 watch list for more than one or two listing cycles it  17 automatically advances to the full list. We think this  18 gives ample incentive to people who want to either firm  19 up a listing or disprove it to do the necessary research  20 to support their case.</p> <p>21 In closing I'd like to mention that: Where do  22 you go from here? We think this current round again is  23 a really positive step in the right direction. You're  24 still going to be troubled by things no matter how well  25 you do the 303(d)watch list.</p>	<p style="text-align: right;">Page 92</p> <p>1 Legal Defense Foundation, the Construction Industry  2 Coalition on Water Quality, and the Building Industry  3 Association of Southern California.</p> <p>4 And I wanted to make a comment that my comments  5 here are applicable to all of the regions, so I don't  6 want to have to repeat them for all the other regions.</p> <p>7 I'd like to begin by discussing the National  8 Research Council's examination of the TMDL program.  9 Especially since the new 303(d) list will drive TMDL's  10 for each of our communities we feel it is important for  11 the state board to consider its findings.</p> <p>12 In October 2000 Congress suspended  13 implementation by the EPA of the federal rules for the  14 TMDL program. Congress requested that the National  15 Research Council examine the scientific basis of the  16 TMDL program. The process carried out over four months  17 beginning in January 2000. Although this was a national  18 process, many of the important lessons from this process  19 are applicable to California's TMDL process.</p> <p>20 Changes recommended by the NRC for the TMDL  21 process include, and I quote, "EPA should approve the  22 use of both a preliminary list and an action list  23 instead of one 303(d) list."</p> <p>24 Now, we definitely commend the state water  25 board and regional boards for adopting NRC's recommended</p>
<p style="text-align: right;">Page 91</p> <p>1 Dr. Green made reference to it earlier that  2 some beneficial uses are not appropriate. And the one  3 I'd like to focus on in closing has to do with effluent  4 dependent waterbodies.</p> <p>5 Wildlife has a big problem in Southern  6 California. If they don't have water they don't  7 survive. If beneficial uses are designated for these  8 waters that demand water quality that's impossible to  9 provide, then dischargers are left with only a couple  10 choices. They can take the water away and do something  11 else with it or they can take it to the ocean. In  12 either event the waterbody that the water was taken out  13 of, the animals in there will suffer.</p> <p>14 The state for some time has grappled with the  15 effluent dependent waterbody issue. A state task force  16 almost six years ago generated all kinds of  17 recommendations. We think if that were solved that  18 would further smooth the way to the next iteration of  19 the 303(d) list. Thank you for your time.</p> <p>20 MR. SILVA: Thank you.</p> <p>21 Tim Piasky?</p> <p>22 MR. PIASKY: Good morning, Board Member Silva.  23 My name's Tim Piasky. Address, 1330 South Valley Vista  24 Boulevard, Diamond Bar.</p> <p>25 I'm here representing the Building Industry</p>	<p style="text-align: right;">Page 93</p> <p>1 approach for a watch list. We feel it is appropriate to  2 demote some of the listings from the '98 303(d) list to  3 watch status, particularly in the cases where use  4 attainability analyses would be appropriate.</p> <p>5 The second recommendation by the NRC was that  6 the state should develop appropriate use designations  7 for waterbodies in advance of assessment for placement  8 on the 303(d) list and refine these use designations  9 prior to TMDL development.</p> <p>10 Third recommendation was to insure that  11 designated uses are appropriate, use attainability  12 analysis should be considered for all waterbodies before  13 a TMDL is developed.</p> <p>14 Now, presumably, the recommendation for these  15 UAA's would apply months strongly to designated  16 beneficial uses that are controversial, including those  17 for which questions have been raised as part of the  18 basin plan and triennial review process. In other areas  19 of the country these UAA's are required prior to  20 beneficial use designations, for example, in the state  21 of Ohio.</p> <p>22 The last item I wanted to bring out from the  23 NRC recommendations is that evaluated data and evidence  24 of violation of narrative standards should not be  25 exclusively used for placement of a waterbody on the</p>



<p style="text-align: right;">Page 94</p> <p>1 action list. Key examples of this would be listings for  2 trash, sediments, toxicity, et cetera.  3 It would be more appropriate to use the watch  4 list until a translator to a numeric standard could be  5 developed for relative listing. We urge the state board  6 to put special effort towards translating narrative into  7 numeric criteria.  8 We also request that the state board have the  9 regional boards define water quality criteria in terms  10 of frequency, magnitude and duration so that the 303(d)  11 list would be formulated with consideration of these  12 factors and subsequent TMDL's based upon water quality  13 objectives would be more sensible and reasonably  14 enforceable. Thank you.  15 MR. SILVA: Thank you.  16 Susan Paulsen?  17 MS. PAULSEN: Thank you for the opportunity to  18 be here. My name's Susan Paulsen. I work for Flow  19 Science, 723 East Green Street, Pasadena, California.  20 Tiering off of what some of my colleagues have  21 already stated, we have done some additional work to  22 review the basin plan for the L.A. region to assess  23 whether the TMDL process as applied in this region  24 complies with the recommendations made by the NRC  25 committee and with applicable laws and regulations.</p>	<p style="text-align: right;">Page 96</p> <p>1 listing process: First, we would recommend that use  2 attainability analyses or a suitable equivalent should  3 be performed for the additional uses, for certain  4 beneficial uses that are contained within the basin  5 plans. That would include especially those for which  6 there is not enough scientific or technical data to  7 justify the listings, and for those waterbodies we would  8 recommend the use of watch list status as opposed to  9 placement on a final 303(d) list until the UAA's or a  10 suitable equivalent would be performed.  11 These designations would include municipal  12 designations and land designations including those made  13 pursuant to the state's sources of drinking water  14 policy. As you heard from others, Rec 1 designations,  15 particularly for cases such as lined flood control  16 channels where access is limited or even illegal, Rec 2  17 designations where water contact and ingestion is highly  18 unlikely -- and here we urge state and regional boards  19 to consider either a risk analysis or to consider the  20 likely level of recreational use prior to applying water  21 quality objectives.  22 Another category would be habitat designations,  23 particularly where habitat is minimal or seasonal, or  24 where designations may conflict with other undesigned  25 uses, such as flood control.</p>
<p style="text-align: right;">Page 95</p> <p>1 As you know, basin plans are established under  2 state law under Porter Cologne, the delegated authority  3 to establish beneficial use designations and water  4 quality objectives pursuant to the Clean Water Act.  5 The L.A. region's beneficial uses and water  6 quality objectives in many cases were formulated with  7 minimal or no consideration of Porter Cologne Section  8 13241 factors.  9 And in particular we draw your attention to the  10 following: The probable as opposed to potential future  11 beneficial uses of water to water quality conditions  12 that could reasonably be achieved through the  13 coordinated control of all factors which affect water  14 quality in the area, economic impacts, the need for  15 developing housing, and the need to develop and use  16 recycled water.  17 Even though consideration of these and other  18 factors are mandated by state and not federal law, they  19 are important because the beneficial uses and water  20 quality objectives that are contained in the basin plans  21 form the basis for 303(d) listings and for subsequent  22 TMDL processing.  23 In taking into account the NRC recommendations  24 and our review of basin plans we would like to make the  25 following specific recommendations for this 303(d)</p>	<p style="text-align: right;">Page 97</p> <p>1 Finally we request clarification of what a  2 potential beneficial use designation really means.  3 The second recommendation that we would make  4 would be that we would recommend watch list status for  5 listings that are based upon water quality objectives  6 that are applied under conditions that they were never  7 intended to cover.  8 For example, when the basin plan was originally  9 formulated it apparently was not clear that bacterial  10 objective were intended to apply to storm waters  11 particularly under high flow conditions when few would  12 argue to those waters are truly swimmable.  13 We note in particular that the episodic nature  14 of storm water flows should be considered in setting  15 beneficial use objectives or beneficial use designations  16 and in applying water quality objectives.  17 And, finally, because the interpretation of  18 narrative standards is somewhat subjective and open to  19 interpretation, we would recommend watch list status for  20 303(d) listings that are based solely upon far different  21 standards and we echo the comments that you've heard  22 before that the state board and the regional boards work  23 to develop translators so that narrative standards can  24 be translated into numeric criteria prior to 303(d)  25 listings for implementing and carrying out the TMDL</p>

<p style="text-align: right;">Page 98</p> <p>1 process.</p> <p>2 In conclusion we would urge the state board to</p> <p>3 request that regional boards review each region's basin</p> <p>4 plans with particular focus on designated beneficial</p> <p>5 uses and water quality objectives prior to adding</p> <p>6 waterbodies to a final 303(d) list.</p> <p>7 It's clear from our review of the NRC's</p> <p>8 recommendations and of the Los Angeles basin plan</p> <p>9 administrative record that the 303(d) process as</p> <p>10 currently formulated contains flaws, in large part</p> <p>11 because of needed improvements to beneficial use</p> <p>12 designations and water quality objectives.</p> <p>13 Unless these flaws are remedied we fear that</p> <p>14 the TMDL process will lead to 303(d) listings that are</p> <p>15 unreasonable and to TMDL's difficult to meet, difficult</p> <p>16 to enforce and that really will have little effect on</p> <p>17 improving water quality in California. Thank you.</p> <p>18 MR. SILVA: Clayton Yoshida?</p> <p>19 MR. YOSHIDA: Hello. My name's Clayton</p> <p>20 Yoshida. I'm employed with the City of Los Angeles. My</p> <p>21 address is 12000 Vista Del Mar in Playa Del Rey.</p> <p>22 City of Los Angeles thanks the state board and</p> <p>23 also the regional board for developing and reviewing the</p> <p>24 303(d) lists.</p> <p>25 The city has submitted already written comments</p>	<p style="text-align: right;">Page 100</p> <p>1 Also the city's also concerned with funding</p> <p>2 sources for waterbodies that are placed on the watch</p> <p>3 list, because indeed waterbodies should not be placed on</p> <p>4 the watch list and forgotten. Therefore the state</p> <p>5 should take -- should review their funding sources and</p> <p>6 provide some information in their procedures to address</p> <p>7 those concerns.</p> <p>8 The city also supports watch listings where</p> <p>9 there is alternative enforcement procedure, such as the</p> <p>10 Bay Protection Toxic Cleanup Program and also encourages</p> <p>11 the state board to review other waterbodies that are</p> <p>12 covered under alternative enforcement programs such as</p> <p>13 other sections of the L.A. Harbor and also the Los</p> <p>14 Angeles River where there are other enforcement programs</p> <p>15 such as our MS 4 permit for storm water.</p> <p>16 Also the city echoes comments on translator for</p> <p>17 narrative objectives. We believe that those waterbodies</p> <p>18 should be placed on the watch list as well. And in our</p> <p>19 written comments we have some more detailed information</p> <p>20 about specific waterbodies. And a couple that we</p> <p>21 haven't put in there that we noticed later on was</p> <p>22 Ballona Creek and also Machado Lake. There is a</p> <p>23 impairment for a group of pollutants called chem A, and</p> <p>24 basically that's a group of pollutants, not actually a</p> <p>25 pollutant. So we ask that the state board work with the</p>
<p style="text-align: right;">Page 99</p> <p>1 and I'd like to go over some of the points that are in</p> <p>2 those comments. Also the state -- the city supports the</p> <p>3 303(d) list in general with the recommended changes of</p> <p>4 the state board.</p> <p>5 Methodology and revision of the entire list is</p> <p>6 one thing that the city supports, because we know that</p> <p>7 the state is developing a procedure for listing on the</p> <p>8 303(d) list, and we thank Mr. Craig J. Wilson for coming</p> <p>9 down to our region to meet with us and to hear our</p> <p>10 concerns and we know he's developing a procedure for</p> <p>11 listing which will be distributed for review probably</p> <p>12 next year.</p> <p>13 And we would like to request that the state</p> <p>14 board put language in the staff report to the EPA that</p> <p>15 the 303(d) list will be reviewed in its entirety as a</p> <p>16 result of the methodology that's developed.</p> <p>17 Also there's been a lot of support for watch</p> <p>18 lists. The city also echoes those support for the watch</p> <p>19 list. However, there also needs to be a procedure in</p> <p>20 order to address the concerns of some stakeholders that</p> <p>21 watch lists may cause a delay in the cleanup of our</p> <p>22 waters. There should therefore be a procedure for</p> <p>23 listing on the watch list and also we have noted the</p> <p>24 concern about time, the time limit on the watch list</p> <p>25 that some waterbodies will be placed.</p>	<p style="text-align: right;">Page 101</p> <p>1 regional board to separate out those pollutants and</p> <p>2 determine which of those pesticides are in fact causing</p> <p>3 impairments.</p> <p>4 And also finally we notice that one water body</p> <p>5 that has impairment is called Santa Monica Bay near</p> <p>6 shore/offshore and we consider that to be a rather large</p> <p>7 waterbody and it's quite unmanageable. And if this</p> <p>8 waterbody is kept on the list it would seem that it</p> <p>9 would remain on the list for quite a long time. So we</p> <p>10 ask that this waterbody be broken down into more</p> <p>11 manageable segments. Thank you for the opportunity to</p> <p>12 comment.</p> <p>13 MR. SILVA: Thank you.</p> <p>14 Adam Ariki?</p> <p>15 MR. ARIKI: For the record, my name's Adam</p> <p>16 Ariki, Los Angeles County Department of Public Works.</p> <p>17 Address is 900 South Fremont in Alhambra 91803.</p> <p>18 Thank you for the opportunity to present the</p> <p>19 county's view on the proposed 303(d) list. Our written</p> <p>20 comment would be submitted by deadline June 15.</p> <p>21 The common theme to our comments follow the</p> <p>22 same logic that you've heard, comprised of three</p> <p>23 factors -- good science, practicality and logic. With</p> <p>24 that in mind I'm going to go really quickly over my</p> <p>25 presentation. I will not labor over those points that</p>

<p style="text-align: right;">Page 102</p> <p>1 have been brought up. I had a power point presentation.  2 We actually have pictures, but unfortunately because of  3 the unavailability of that I'm going to have to refer  4 you to the handouts I submitted earlier in the beginning  5 of the presentations.  6 First concern that we have is if -- people have  7 brought this issue up that is of really great concern to  8 the L.A. County Department of Public Works and  9 particular Flood Control District, and that is the  10 concrete-lined flood control channels.  11 The designation of these channels for Rec 1  12 beneficial uses is erroneous. As you can see from the  13 presentation that I've submitted, there are pictures  14 that these reaches are not accessible to public, they  15 are gated, they are fenced, and people are not going to  16 swim in them.  17 An example of that, the Dry Canyon Creek of Los  18 Angeles river. It's placed on the proposed list for  19 total coliform for intermittent Rec 1 beneficial use.  20 You will see from the picture clearly that there are  21 signs of no trespassing, it's illegal, it's prohibited  22 by the law. There is a fine of \$500 and imprisonment of  23 six months if you go in there. Designations like that  24 do not make sense.  25 I'm going to skip over all these pictures.</p>	<p style="text-align: right;">Page 104</p> <p>1 laboratory results with non-detectable levels.  2 An example of that, take selenium, for example,  3 the total seleniums. For non-detect samples from Malibu  4 it was assigned 5 parts per billion or 5 micrograms per  5 liter. Selenium from Ballona Creek were assigned 2.5  6 micrograms per liter and from Dry Canyon they were  7 assigned, the same selenium, zero micrograms per liter.  8 And all these values were used to determine impairments  9 in these waterbodies.  10 So there is inconsistency there. Another thing  11 for the Santa Clara River Reach 3 it was identified to  12 be impaired for nitrate. The process of the  13 determination ignored 40 samples -- 40 samples that  14 shows non-detect. Now, had these 40 samples were  15 considered, only 7 percent of the samples would have  16 been in exceedance of the water quality objective as  17 opposed to 17 percent. We request a rationalization for  18 that.  19 Impairment due to natural sources. An example  20 of that there is a McGrath Lake in Ventura County. It's  21 believed that it could be impaired due to high bacterial  22 fecal coliform from fresh water birds and aquatic life.  23 Now, we request that impairment due to natural resources  24 or natural-occurring constituents be downrated and place  25 those on the watch list until further additional data is</p>
<p style="text-align: right;">Page 103</p> <p>1 They are there for you to look. They don't need any  2 explanation. They are self-explanatory.  3 The next two issues that we're concerned with  4 that have been brought up and briefly touched on what  5 our main concerns are, they have to do with the water  6 quality data assessment. The first issue, there was no  7 consideration given to seasonal variation in water  8 quality throughout the water quality assessment process.  9 An example of that there are five  10 waterbodies -- Coyote Creek, Malibu Creek, San Gabriel  11 River, Los Angeles River and Ballona Creek -- they are  12 all identified to be impaired for total metals and  13 dissolved metals and yet this is all based on sample  14 collected only during wet weather. That's crucial. We  15 believe that there should be samples collected during  16 the dry weather period of year.  17 We want to direct the state board attention to  18 the Florida cases where they actually require at least  19 one sample from the three of the four seasons of each  20 year for water quality assessment. That is evident that  21 such water quality is necessary for impairment  22 determination.  23 The second issue with water quality data  24 assessment we'd like to bring up is the lack of  25 consistency or consistent approach in evaluating the</p>	<p style="text-align: right;">Page 105</p> <p>1 collected to verify the determination of their  2 impairment.  3 Next issue is the alternative enforcement  4 program. It was brought up by the City of Los Angeles  5 we support that the fact that it is being used to place  6 impairments on the watch list but we are not clear on --  7 there is no criteria to tell us which kind of  8 alternative enforcement program can be used for that  9 purpose.  10 So we'd like to have, one, a list of all these  11 alternative programs; two, the criteria that we can use  12 to use these alternatives programs, enforceable  13 alternative programs, so that we can place constituents  14 on a watch list instead of the 303(d) list.  15 In conclusion the 303(d) list is used to  16 develop the TMDL's. If it's done right we will minimize  17 our differences during future TMDL process. If it's  18 done wrong and ends up contentious, we'll waste precious  19 resources and future TMDL's, as has been demonstrated in  20 three or four TMDL's that have been promulgated so far.  21 Thank you.  22 MR. SILVA: Thank you.  23 Sharon Green?  24 MS. GREEN: Good morning, Board Member Silva.  25 I'm Sharon Green. My address is P.O. Box 4998,</p>

1 Whittier, California 90607. I'm here today with Heather  
 2 Lamberson of our staff. We're here on behalf of the  
 3 Sanitation Districts of Los Angeles County.  
 4 By way of background, the sanitation districts  
 5 are a consortium of independent special districts  
 6 serving the waste water and solid waste management needs  
 7 of over 5 million people and 33,000 industries within  
 8 Los Angeles County. We current serve 78 cities and  
 9 unincorporated areas within the County.  
 10 We own and operate 11 waste water treatment  
 11 plants in Los Angeles County. Eight of these discharge  
 12 to surface waters, including the Santa Clara River, the  
 13 Rio Hondo, the lower San Gabriel River watershed and the  
 14 ocean off the Palos Verdes peninsula. So we have a  
 15 direct interest in a number of listings and items that  
 16 are on the 303(d) list.  
 17 I wanted to start by saying we really  
 18 appreciate the fact that you're having a hearing down  
 19 here in Southern California. Obviously it makes it a  
 20 little more convenient for all of us. We appreciate the  
 21 extra effort the state board has gone to do that. Also  
 22 appreciate the fact that both regional board staff as  
 23 well as state board staff have been willing to meet with  
 24 interested parties such as ourselves to discuss the list  
 25 that was under development.

1 We believe a collaborative process could really  
 2 enhance the development of the list. We believe that  
 3 stakeholders often have a lot of knowledge and  
 4 information about particular waterbodies.  
 5 We have provided a handout to the staff  
 6 summarizing some of our major comments which I'm going  
 7 to go over and Heather Lamberson will go over some of  
 8 them for inclusion in the administrative record.  
 9 We will be submitting a complete comment  
 10 package by the June 15th deadline and, by the way, we do  
 11 appreciate that extension which was provided by the  
 12 board to allow additional information and data to be  
 13 considered in this listing process.  
 14 I guess my first overall major comment is that  
 15 we agreed with the state board's depiction of the list  
 16 as a list of water quality limited segments for which  
 17 total maximum daily loads or TMDL's are required, and  
 18 this is a little bit more limited definition than some  
 19 people use.  
 20 I think some people view it as a solution for  
 21 every problem facing our waterbodies and I think the  
 22 more expansive view is really beyond the capability of  
 23 TMDL program and assumes that kind of the one size fits  
 24 all approach of a TMDL can solve every problem, and in  
 25 fact that is not the case in our opinion.

1 We think that some things -- for instance,  
 2 algae, exotic species and other types of things that may  
 3 have been caused by hydrologic modifications -- are not  
 4 amenable to a TMDL.  
 5 And finally we believe it's important to  
 6 recognize and leverage the efforts going on under other  
 7 programs under this concept that has been put forward of  
 8 using alternative enforceable program and recognizing  
 9 that those efforts are underway to achieve water quality  
 10 standards and may be a very viable alternative to a  
 11 TMDL.  
 12 We strongly support the adoption of the watch  
 13 list as has been stated by many other folks. We agree  
 14 it should not just be a list of waters for which nothing  
 15 is done. Clearly waters placed on the watch list  
 16 because there is insufficient information should receive  
 17 high priority for monitoring and further study before  
 18 the next update of the 303(d) list.  
 19 There are several examples of things that we  
 20 propose should be moved to the watch list or placed on  
 21 the watch list if they're proposed new listing. Some of  
 22 the specific ones includes the algae, toxicity and fish  
 23 histology listings for the lower San Gabriel River  
 24 watershed. Our specific comments on those will be  
 25 included in our full comment package.

1 We also support a new aspect of -- I won't say  
 2 exactly of the list but the new aspect of this whole  
 3 process, which is the adoption of a TMDL completed list.  
 4 I think that's a great way to show progress that the  
 5 state is making and to recognize the efforts that are  
 6 underway and it's also a good way to track those  
 7 efforts. We also would like to state that we support  
 8 some of the proposed delistings for certain items.  
 9 Let's see. See if I can cut it down.  
 10 And lastly and actually most importantly I  
 11 think we would like to ask that the state board agree to  
 12 review certain listings for some waters that are on  
 13 currently on the 1998 303(d) list. We don't agree that  
 14 it should just all be carried forward with no review.  
 15 We think that that'll create some problems for the state  
 16 board that will create a lot of inconsistencies with  
 17 some of the decisions being made in this listing  
 18 process.  
 19 There are a number of things for which we think  
 20 there are valid reasons to either place on the watch  
 21 list or even possibly delist, and my colleague is going  
 22 to speak about a couple of those where we see water  
 23 quality standards being attained already and we think  
 24 there is no need for a TMDL. And another example is  
 25 where there is an alternative enforceable program in

<p style="text-align: right;">Page 110</p> <p>1 place. Thank you very much.</p> <p>2 MR. SILVA: Thank you.</p> <p>3 Heather Lamberson?</p> <p>4 MS. LAMBERSON: My name's Heather Lamberson.</p> <p>5 I'm with the L.A. County Sanitation Districts, P.O. Box</p> <p>6 4998, Whittier, California. I'm just here to follow up</p> <p>7 on Sharon's comments with comments on specific listings.</p> <p>8 And the first two examples I'm going to talk</p> <p>9 about are waterbodies where the current data show there</p> <p>10 is attainment of the water quality standard, so actually</p> <p>11 I'm up here to give you good news. These are</p> <p>12 waterbodies that are on the 303(d) list that are not</p> <p>13 impaired.</p> <p>14 Both of these examples are from the Santa Clara</p> <p>15 River, Reach 8, and the first listing that I will talk</p> <p>16 about is nitrate with nitrite. We request that this</p> <p>17 listing be removed from the 303(d) list as impaired.</p> <p>18 The nitrate plus nitrite objective for Reach 8</p> <p>19 is 10 milligrams per liter of nitrogen according to the</p> <p>20 basin plan. And the basis of this listing is unclear.</p> <p>21 After review of the administrative record we were not</p> <p>22 able to find any data supporting this initial listing.</p> <p>23 But regardless of this, based on a review of</p> <p>24 the data collected over the past three years this</p> <p>25 waterbody is in attainment with its nitrate plus nitrite</p>	<p style="text-align: right;">Page 112</p> <p>1 So again, this is an example of a reach that's</p> <p>2 on the 303(d) list; yet the water quality standards are</p> <p>3 being attained. Therefore we think this listing should</p> <p>4 be removed from the 303(d) list because current data</p> <p>5 shows that the waterbody's not impaired.</p> <p>6 The next issue that I'd like to talk about is</p> <p>7 that we believe that ammonia listings for the San</p> <p>8 Gabriel River watershed and Santa Clara River watershed</p> <p>9 should be moved to the watch list. These are ammonia</p> <p>10 listings and this is another situation where we have</p> <p>11 good news. In this case we have an alternative</p> <p>12 enforceable program that'll cause the waterbodies to be</p> <p>13 in attainment with the applicable ammonia objectives.</p> <p>14 Because there's an alternative enforceable</p> <p>15 program already in place to address these ammonia</p> <p>16 impairments and the water objectives will be attained in</p> <p>17 the near future in a process separate from the 303(d)</p> <p>18 process, a TMDL is not required for those reaches.</p> <p>19 And again we think that pursuit of the TMDL to</p> <p>20 address these listings will only result in a waste of</p> <p>21 resources for a problem that has already been addressed.</p> <p>22 In June 1995, the district received NPDES</p> <p>23 permits that have a compliance schedule related to the</p> <p>24 ammonia objectives. In accordance with the permits</p> <p>25 we've been pursuing the addition of nitrification and</p>
<p style="text-align: right;">Page 111</p> <p>1 objective. And we submitted some figures along with our</p> <p>2 written comment summary, and the receiving water data</p> <p>3 from 1999 to 2001 shows that zero samples out of 45</p> <p>4 samples exceed the basin plan objective. So clearly the</p> <p>5 waterbody is attaining standard, and therefore we</p> <p>6 believe that it should be delisted.</p> <p>7 This is particularly important because</p> <p>8 currently there is a nutrient TMDL for the Santa Clara</p> <p>9 River that's underway and it's imperative that the state</p> <p>10 board remove this listing so the TMDL can be focused</p> <p>11 just on the actual impairments that exist. Therefore we</p> <p>12 won't waste valuable resources on a problem that's just</p> <p>13 not there.</p> <p>14 To follow up on that, Santa Clara River Reach 8</p> <p>15 was also listed in 1998 as impaired to low dissolved</p> <p>16 oxygen and the basin plan objective for dissolved oxygen</p> <p>17 requires a median annual concentration of 7 milligrams</p> <p>18 per liter with no single determination less than</p> <p>19 5 milligrams per liter.</p> <p>20 And again, a summary of the current data for</p> <p>21 Reach 8 shows that only 1 out of 290 samples are below</p> <p>22 the 5 milligram per liter DO criteria. In addition, the</p> <p>23 annual average DO, the second part of the objective, for</p> <p>24 1999 through 2001 was also about 70 milligrams per</p> <p>25 liter.</p>	<p style="text-align: right;">Page 113</p> <p>1 denitrification facilities at the district's WRP's and</p> <p>2 the construction of these facilities will result in</p> <p>3 compliance with the applicable ammonia objectives.</p> <p>4 And we have pilot testing that shows that we</p> <p>5 will be able to meet the criteria that's applicable at</p> <p>6 the June 2003 compliance date.</p> <p>7 Again I just wanted to reinforce that because</p> <p>8 there's an alternative enforceable program already in</p> <p>9 place -- it's required by our permits -- and we have</p> <p>10 data that shows that we will meet the ammonia water</p> <p>11 quality objective, that pursuing a TMDL for those</p> <p>12 listings is really not going to get us anywhere. There</p> <p>13 is already a fix in place that'll address this water</p> <p>14 quality concern. Thank you.</p> <p>15 MR. SILVA: Thank you.</p> <p>16 Anjali Jaiswal?</p> <p>17 MS. JAISWAL: Good afternoon, Board Members,</p> <p>18 Board Members of the State Board. I am Anjali Jaiswal,</p> <p>19 staff attorney at NRDC. On behalf of our NRDC and our</p> <p>20 400,000 members nationwide and 80,000 members in</p> <p>21 California, we would like to thank the state board for</p> <p>22 the opportunity to comment today.</p> <p>23 We have general comments on the proposed 303(d)</p> <p>24 list as well as some specific comments relating to</p> <p>25 Region 4.</p>

<p style="text-align: right;">Page 114</p> <p>1 We support the state board's actions to create  2 a defensible 303(d) list. We also support the addition  3 of 195 new water segments. However, we are concerned  4 about maintaining one 303(d) list. Specifically we are  5 concerned about the watch list and the TMDL completed  6 list.</p> <p>7 We are also concerned about the transparency of  8 decisions to delist water segments. We support one  9 303(d) list. We also request elimination of the watch  10 list and the TMDL completed list.</p> <p>11 The Clean Water Act Section 303(d) and  12 implementing regulations contemplate one list. The  13 Clean Water Act and implementing regulations focus on  14 attaining water quality standards, not creating separate  15 lists for any listing. They do not require a watch  16 list. They do not require a TMDL completed list.</p> <p>17 The watch list and the TMDL completed list  18 function to delist waters from the 303(d) list, because  19 as clearly set forth in the staff report the waters on  20 the watch list and the TMDL list completed list are not  21 part of the 303(d) list.</p> <p>22 The 177 waters on the watch list result in a  23 total delisting of 247 water segments. This does not  24 include the waters that are proposed for the TMDL  25 completed list.</p>	<p style="text-align: right;">Page 116</p> <p>1 regulatory programs are not stringent enough to  2 implement any water quality standard.</p> <p>3 That Section 303(d) itself already considers  4 existing programs and the situation where TMDL's are  5 mandatory. Now going to the implementing regulations.</p> <p>6 40 CFR 130.7 (b)(1) lists the reasons for not  7 including waters on the 303(d) list. It says waters  8 don't have to be listed if they are meeting water  9 quality standards. It also discusses not listing waters  10 where there are technical controls that show that the  11 waterbody will attain water quality standards within the  12 next listing cycle.</p> <p>13 If the state board is proposing that these  14 regulatory programs function as these kinds of controls  15 considered in 40 CFR 130.7 then the state board needs to  16 provide insurance, some sort of justification that  17 compliance will be met. They can't just delist these  18 waters by placing them on a watch list.</p> <p>19 We are also concerned about several segments  20 listed for toxicity that are on the watch list instead  21 of on the 303(d) list that were discussed for Region 9  22 and also in Region 2. Because of the bio-accumulative  23 nature of toxicity these water segments remain impaired  24 and must be on the 303(d) list. If data are available  25 that water quality is impaired, then the water should be</p>
<p style="text-align: right;">Page 115</p> <p>1 By having 247 delistings this outweighs the 195  2 additions. These actions on a whole weaken efforts to  3 attain water quality standards in California. We  4 request at a minimum that the watch list and the TMDL  5 completed list be considered part of the 303(d) list.</p> <p>6 Specifically regarding the watch list. The  7 watch list functions as an additional hurdle for waters  8 to get on to the 303(d) list. If the evidence is there,  9 it must be listed. We are also concerned specifically  10 in Region 4 where the regional board staff scientists,  11 regulators, technicians recommended placing waters on  12 the 303(d) list; however the state board placed these  13 waters on the watch list. There is no basis for placing  14 these waters on the watch list.</p> <p>15 In fact, in Region 4 there were 23 waters that  16 the regional board proposed to place on the 303(d) list  17 but were placed on the watch list. At the minimum the  18 state board should articulate a sound reason for not  19 placing these waters on the 303(d) list.</p> <p>20 More importantly and critically today we're  21 concerned about placing waters on the watch list based  22 on existing regulatory programs. There have been  23 several misstatements about the law today. Section  24 303(d) clearly states and directly states to identify  25 waters for which effluent limitations through other</p>	<p style="text-align: right;">Page 117</p> <p>1 on the 303(d) list. It is also unclear what  2 insufficient data means as a basis for delisting.</p> <p>3 Going to the TMDL completed list. The TMDL  4 completed list runs contrary to Clean Water Act. The  5 Clean Water Act focuses on meeting attainment standards.  6 If it is not meeting attainment standards regardless of  7 whether there is a TMDL completed for the waterbody it  8 should remain on the 303 delist. The Clean Water Act  9 Section 303(d) doesn't focus on delisting based on  10 completed TMDL's. Water should stay on the 303(d) list  11 because the water quality assessment is an empirical  12 assessment, not a legal assessment saying that TMDL's  13 are completed. It's improper to delist without showing  14 that the waterbody's beneficial uses are satisfied.</p> <p>15 As we have seen from the TMDL's, the three  16 TMDL's that have been completed in Region 4, they have  17 long implementation plans and they are far from meeting  18 water quality standards. Keeping waters on the 303(d)  19 list is crucial to the success of meeting water quality  20 standards throughout the TMDL process.</p> <p>21 Lastly a few words on transparency as far as  22 delisting. The reason for delisting should be  23 transparent. The implementing regulations require good  24 cause for delisting. The state board proposes delisting  25 based on EDL, as well as no guidelines, no defensible</p>

<p style="text-align: right;">Page 118</p> <p>1 guidelines, outdated NAS guidelines. We are concerned 2 about these delistings.</p> <p>3 In Region 4 alone there are over 40 such 4 segments for delisting based on EDL. At some point 5 EDL's indicate an impairment and cannot be delisted 6 unless some affirmative information is provided to show 7 that the water segment is not impaired.</p> <p>8 Also, for the no guidelines, no defensible 9 guidelines, outdated NAS guidelines. There is no good 10 cause given for delisting these waters. If these 11 guidelines are flawed they must state how they are 12 flawed. They must also indicate why these are not 13 defensible.</p> <p>14 Lastly we urge the state board to maintain the 15 integrity of the 303(d) list by keeping one 303(d) list 16 and maintaining water segments on the 303(d) list that 17 have not attained water quality standards including 18 elimination of the TMDL completed list and the watch 19 list. Thank you.</p> <p>20 MR. SILVA: Thank you.</p> <p>21 Leslie Mintz?</p> <p>22 MS. MINTZ: Good afternoon. Heal the Bay 23 strongly supports the state board's use of the 1998 24 Section 303(d) list. We support the state's additions 25 to the listing. We support the listing of Malibu Creek</p>	<p style="text-align: right;">Page 120</p> <p>1 L.A.'s draft comments on the 303(d) list. I have not 2 seen the final comments, but they commented that -- to 3 the effect that a biological criteria like algae or odor 4 or scum should not be on the 303(d) list, waters 5 impaired for these things should be on the watch list.</p> <p>6 And we feel that these kinds of narrative 7 criteria in listing waters impaired for these narrative 8 criteria is critical precisely because narrative 9 criteria indicates an impairment for which it has not 10 been determined what is the source of the pollutants 11 involved.</p> <p>12 In this regard the Clean Water Act and the EPA 13 2002 integrated guidance says to put waters on a watch 14 list if there is insufficient or no data about whether 15 there is an impairment to begin with. It does not say 16 to put waters on a watch list because there is a 17 question about what is the source of the impairment.</p> <p>18 Further, only legal changes to a relevant basin 19 plan can change narrative or biological criteria. 20 There's been a lot of de-designation talk here today. 21 It's not the correct forum. The Clean Water Act is very 22 clear, as is EPA guidance, about the appropriate way to 23 do that.</p> <p>24 Further, we don't believe that listing or 25 delisting decisions should be based on variables like</p>
<p style="text-align: right;">Page 119</p> <p>1 for sediments, and Shelley Luce, our staff scientist, 2 will talk about that. We support the state's efforts to 3 allow public participation and we thank the staff for 4 their efforts in this regard.</p> <p>5 We do not, however, support the state board's 6 proposed actions to make three separate lists. We do 7 not support a watch list, especially watch listing based 8 upon whether or not pollutants causing an impairment are 9 unknown, whether is there an alternative enforceable 10 program, or whether there is a TMDL in progress.</p> <p>11 Likewise we don't support a TMDL completed list.</p> <p>12 In this regard we recommend to the state board 13 and urge the state board to delete factors number 12 and 14 13 from the list of factors that staff considers in 15 making elements. Factor number 12 is, quote, source of 16 pollution, and factor number 13 is, quote, availability 17 of alternative enforceable program.</p> <p>18 As an overarching premise we believe that the 19 303(d) list must err on the side of protecting human 20 health and the environment. A watch list is not in 21 accord with this fundamental premise. If less waters 22 are listed, less waters are cleaned up.</p> <p>23 We're also concerned that even though it may in 24 concept be a good idea it is very subject to abuse. And 25 an example of this occurred recently with the City of</p>	<p style="text-align: right;">Page 121</p> <p>1 alternative enforceable programs, because those programs 2 have not worked. That is why we now have TMDL's due to 3 a consent decree. Again, we feel this is against the 4 detailed and already specific requirements in the Clean 5 Water Act for delisting of waters. Such delisting is de 6 facto delisting in our opinion.</p> <p>7 We disagree with the separate listing of 8 impaired waters that have TMDL's but for which water 9 quality standards have not been attained.</p> <p>10 As Anjali stated previously, water quality 11 assessment is an empirical assessment, not a legal 12 assessment. And it's imperative, we feel, that you do 13 not delist waters that are, at a minimum, meeting water 14 quality standards, especially when you have 15 implementation periods that span a decade. We feel this 16 is contrary to EPA guidance. We detail this in our 17 comments.</p> <p>18 And finally and lastly, the 303(d) list is also 19 a trigger for grant and restoration funds to fix these 20 waters and the very waters we need assistance in 21 cleaning and restoring may not qualify for funding 22 unless they are on the 303(d) list. Thank you.</p> <p>23 MR. SILVA: Thank you.</p> <p>24 Shelley Luce?</p> <p>25 MS. LUCE: I am Shelley Luce, staff scientist</p>

<p style="text-align: right;">Page 122</p> <p>1 at Heal the Bay. We would like to thank the staff, the  2 state and regional boards for the way these listings  3 were conducted. Their analyses were correctly and  4 carefully carried out. This is long overdue and we are  5 very pleased that the impairment of beneficial uses due  6 to excess sediment in Malibu Creek has been recognized  7 and we strongly support this new listing.  8 However, we are disappointed that Calleguas  9 Creek was not placed on the 303(d) list as impaired by  10 excess sediment and as recommended by the L.A. regional  11 board staff. The regional board staff correctly weighed  12 the substantial evidence submitted in support of this  13 listing, including obtaining outside professional  14 opinion from the California Department of Fish and Game  15 regarding the very strong macroinvertebrate data from  16 Calleguas Creek. These data and others clearly show  17 extreme sediment impairment in Calleguas Creek, as in  18 Malibu Creek, where habitat destruction due to excess  19 sediment and runoff has been a chronic problem in  20 Calleguas Creek as well for years.  21 Excess sediments cover and fill in the gravel  22 and cobble habitats that are so important to the insect  23 communities that sustain aquatic food webs.  24 We see no reason to ignore the regional board's  25 recommendations to place Calleguas Creek on the list as</p>	<p style="text-align: right;">Page 124</p> <p>1 aquatic life and this should be required in monitoring  2 programs on watersheds that have been listed based on  3 EDL's in the past.  4 Similarly we are concerned about delisting  5 based on outdated guidelines, no guidelines or no  6 defensible guidelines, because this does not provide  7 affirmative proof that a waterbody that has been  8 considered impaired in the past is not in fact impaired  9 any longer.  10 I have one more comment. The rivers of L.A.  11 and Ventura counties are not flood control channels or  12 waste conveyance ditches. According to some the  13 solution to water quality problems is to pave rivers,  14 label them flood control channels, and write them off as  15 sewers for toxic waste.  16 And this is unacceptable to the vast majority  17 of our citizens, the ones whom these resources really  18 belong to. It is our responsibility to protect  19 waterways and their beneficial uses and any attempt to  20 weaken Clean Water Act protections through watch list  21 and de facto de-designations of beneficial uses must not  22 be allowed. Thank you.  23 MR. SILVA: Thank you.  24 Louis Celaya?  25 MR. CELAYA: Good afternoon, Mr. Silva. My</p>
<p style="text-align: right;">Page 123</p> <p>1 impaired for excess sediment. This recommendation  2 should be accepted and the impairment should be listed.  3 We are also concerned about delisting based on  4 the elevated data level. The EDL is a statistical  5 measure which compares contaminant levels in animal  6 tissues from different waterbodies.  7 The listings were based on EDL's where tissue  8 levels in a given waterbody exceeded levels in at least  9 85 percent of other waterbodies in the state, and this  10 may indicate a contamination problem.  11 The question is do those elevated tissue levels  12 have human level impacts and do they impact the aquatic  13 life that are accumulating the contaminants. Since the  14 data are available they should be compared to known  15 standards where possible and delisting should only occur  16 if levels are below those known to affect human health  17 or aquatic life. Otherwise there is no affirmative  18 proof that the waterbody is not impaired.  19 Delisting based on EDL's result in greater  20 loadings of biocumulative contaminants that are elevated  21 in fish tissues already and fails to protect aquatic  22 life or human health where those fish or shellfish are  23 eaten by people. At the very least these delistings  24 need to be further investigated to determine whether  25 biocumulative toxins are endangering human health and</p>	<p style="text-align: right;">Page 125</p> <p>1 name's Louis Celaya. I'm a management analyst II for  2 City of Monrovia. I am assisting the Director of Public  3 Works with the city's NPDES program.  4 Our comments will address the TMDL priority  5 settings as it applies to Monrovia Canyon Creek. I'm  6 here today to reiterate our concerns addressed in our  7 May 13 correspondence to Mr. Craig Wilson.  8 It appears that the TMDL priority being set for  9 Monrovia Canyon Creek may be based solely on USEPA  10 consent decrees. In our May 13 correspondence we  11 inquired as to when sampling had been taken and at what  12 locations to justify the current TMDL priority setting.  13 A review of available data at the regional board level  14 indicates the last sampling done on Monrovia Canyon  15 Creek was back in 1994.  16 At that time Monrovia Canyon Creek was given a  17 fully supporting status for the element of concern.  18 Review of the sampling stations appears to indicate that  19 samples were taken outside the Monrovia city limits  20 several miles from Monrovia Canyon Creek. The sampling  21 location also appears to serve as a receiving location  22 for several neighboring cities' urban runoff.  23 Our question today is how can Monrovia Canyon  24 Creek be placed on high TMDL if there is no current  25 information available to justify the priority setting</p>



<p style="text-align: right;">Page 126</p> <p>1 and factors such as possible tributaries into Monrovia  2 Canyon Creek and other sources had not been considered  3 or reviewed?  4 Finally, if TMDL priority designation is not  5 being based on the consent decree and is being  6 established based on beneficial uses associated with the  7 waterbody as referenced by factors cited in the state  8 report then here also lies a problem as many of the  9 intermittent beneficial uses applied to Monrovia Canyon  10 Creek is not correct.  11 It is our hope that the state board will  12 consider the TMDL priority setting being applied to  13 Monrovia Canyon Creek and similar waterbodies whose  14 assigned beneficial uses may be misdesignated.  15 Additionally we hope the state water resources  16 control board will adhere to the recommendations of  17 national reports to proceed cautiously with the  18 development and implementation of the TMDL program in  19 Region 9 until a comprehensive review of the water basin  20 plans has been completed. Thank you for your  21 consideration.  22 MR. SILVA: Vince Brar?  23 MR. BRAR: Good morning. Good afternoon, I  24 should say. My name's Vince Brar, with the City of  25 Cerritos. I'm the deputy city manager with the city.</p>	<p style="text-align: right;">Page 128</p> <p>1 insufficient specifically because it was only wet  2 weather data. I would agree with those comments and  3 would like to reiterate those.  4 We also have some concerns regarding the  5 rationale, if you would, for in 1998 listing  6 establishing fish histology, algae and the high coliform  7 count as the basis. These are more conditions and  8 indicators rather than specific pollutants and we  9 believe till there can be more specific analysis as to  10 what pollutants would lead to that rather than some  11 naturally occurring phenomenon or hydrobiologic  12 conditions and things of that sort, these waterbodies  13 should be put on the watch list rather than the 303(d)  14 list.  15 I disagree with some of the comments that were  16 made by a couple of speakers before me regarding the  17 Coyote Creek, for example, and San Gabriel River, at  18 least through our city's, as not being flood control  19 channels. They are flood control channels. Yes, there  20 is a title "River" used for them. They are fully lined  21 edge to edge. There is no water in them 11 months out  22 of the year. Beneficial use of those waterways should  23 be carefully analyzed as to how it's achievable. And a  24 designation otherwise I believe is erroneous.  25 Thank you for the opportunity. We really</p>
<p style="text-align: right;">Page 127</p> <p>1 In the interests of brevity and not repeating what's  2 already been said --  3 MR. SILVA: I appreciate that.  4 MR. BRAR: -- I will keep my comments to some  5 of the issues that are important to us that have not  6 already been said.  7 I agree with a lot of comments that have been  8 made before you related to the watch list concept. We  9 support the watch list concept. Our rationale for that  10 is that until it's in some conclusive form shown that  11 the pollutants that are identified are the cause for the  12 impairment, there is some good scientific data behind it  13 that supports it, those waterbodies should be on the  14 watch list and not on the 303(d) list.  15 We're pleased our city is located on the  16 southeast portion of L.A. County. We border Orange  17 County. We have two waterways that run through our  18 city. On the western side it's the San Gabriel River  19 and on the south-eastern side it's the Coyote Creek  20 Channel.  21 We are a little bit concerned about some of the  22 items that are being identified for Coyote Creek Channel  23 as the basis for being put on the list, primarily the  24 metals. There was some testimony earlier today which  25 stated that the data used for Coyote Creek Channel was</p>	<p style="text-align: right;">Page 129</p> <p>1 appreciate the process that is taking place and the  2 opportunity to participate. Thank you.  3 MR. SILVA: Thank you.  4 Pat Malloy?  5 MR. MALLOY: Good afternoon, Board Member  6 Silva. My name's Pat Malloy. I am Director of Public  7 Works for the City of Arcadia. You have my address.  8 You won't need that green sheet of paper. I'll  9 be pretty brief. I'd like to thank you for the  10 opportunity to stand before you here this afternoon to  11 discuss the very important listing process.  12 First I'd like to stress that the City of  13 Arcadia is strongly committed to clean water. And I'd  14 like to reaffirm our willingness to proactively pursue  15 that goal. However, we're a small city nestled in the  16 foothills of the San Gabriel mountains, covering only 11  17 square miles, with limited means. So any new clean-up  18 action that we must take needs to be clearly defined and  19 based on sound scientific analysis.  20 Arcadia's drainage area comprises of three  21 significant washes which carry runoff water out of the  22 San Gabriel mountains. I've been informed that you have  23 a tributary rule that says although washes are not  24 specifically listed as impaired we could be included in  25 regulatory actions for Rio Hondo or even for the Los</p>

1 Angeles River because our drainage passes through those  
2 two waterways before it reaches the ocean. We submit  
3 that it would be more productive for the board to  
4 actually specify impairments for waters rather than  
5 implicating them by reference.

6 Our storm water which discharges to the Rio  
7 Hondo is currently listed as high coliform output count  
8 at the spreading grounds. Unfortunately that term is  
9 not sufficiently defined. What specifically does high  
10 coliform count mean? Does coliform originate from  
11 human, animal or from other sources?

12 Due to this uncertainty we believe that the  
13 listing of Rio Hondo as impaired for high coliform count  
14 should be deleted or at the very least it should be  
15 instead placed on the watch list to determine what sort  
16 of coliform is causing the high count so appropriate  
17 measures can be taken as necessary.

18 I'd like to point out that the Rio Hondo  
19 spreading grounds are managed to percolate water to the  
20 ground water table for future use. Water contact  
21 recreation and even non-contact recreation is not there.

22 Again, we share the board's desire to achieve  
23 water quality improvement and stand ready to do our part  
24 but in order to maximize results we urge you to  
25 incorporate our recommendations into the final list so

1 provision as an offramp to listing, and listing  
2 waterbodies with direct beneficial use impact. And I'll  
3 take a moment for each of those concerns.

4 On the watch list, Region 4 agrees in principle  
5 with the concept of a watch list where data or  
6 information suggests the standards are not being met, if  
7 the data or information is adequate to confirm that the  
8 standards are not being met. However, Region 4 has  
9 serious concerns about state board's decision to  
10 establish a watch list at this late point in the  
11 process.

12 Region 4 is concerned because Region 4's staff  
13 set minimum data requirements necessary for listing of  
14 waterbodies and did not consider waterbodies for listing  
15 or delisting where insufficient data were available.  
16 Because the state board did not define the scope or  
17 nature of the watch list at the outset of Region 4's  
18 water quality assessment, there may be some cases where  
19 waterbodies or pollutants were not considered because of  
20 inadequate data.

21 This after-the-fact analysis creation of a  
22 watch list results in an inconsistent application of a  
23 poorly defined list. In other words, we did not look at  
24 many groups of pollutants because there were less data  
25 than we considered necessary to define it as impaired.

1 our limited resources can be directed to those waters  
2 where beneficial uses are actually impaired. Thank you  
3 for your time.

4 MR. SILVA: Thank you.

5 Jon Bishop?

6 MR. BISHOP: Thank you. My name's Jon Bishop.  
7 I am with the Los Angeles Regional Water Quality Control  
8 Board. The Los Angeles Regional Water Quality Control  
9 Board staff appreciates the opportunity to provide  
10 comments on the proposed 2002 Clean Water Act Section  
11 303(d) list of water quality limited segments.

12 In a majority of the cases Region 4 agrees with  
13 the state board's recommendation regarding additions and  
14 deletions from the 303(d) list. We have sent a letter  
15 detailing our comments to your staff and I will not go  
16 into detail today. I will just summarize a few of the  
17 major points.

18 I'd like to mention that there were some  
19 discrepancies between the Region 4's recommendations and  
20 the recommendations of the state board staff which we've  
21 been able to resolve through clarifying discussions with  
22 state board staff and we appreciate that opportunity.

23 In general, there are four -- three areas of  
24 concern that Region 4 still has: The use of the watch  
25 list, application of alternative enforcement program

1 Region 4 is also concerned that the watch list  
2 has not been applied perfectly as defined in the state  
3 board's staff report. Specifically there are  
4 waterbodies that are recommended for watch list where  
5 state board staff has identified an alternative program  
6 but it is not enforceable; two, waterbodies that have  
7 met regional board's assessment criteria; and, three,  
8 waterbodies with direct beneficial use impact. Region 4  
9 strongly recommends listing those waterbodies which are  
10 identified in our written comments.

11 I'm just going to take one second to talk a  
12 little bit about the enforceable program alternative and  
13 then the direct impact. In several cases, state board  
14 indicated because there are alternative enforcement  
15 programs, namely, the bay protection and cleanup  
16 program, that the above listings -- that the listings  
17 should be instead placed on a watch list.

18 Region 4 acknowledges that the Consolidated  
19 Toxic Hot Spots Cleanup, Volume I, Policy Toxic Hot  
20 Spots List and Findings released by State Resources  
21 Control Board in June of 1999 says that the regional  
22 board shall implement the remedial portions of the  
23 consolidated plan to the extent that the responsible  
24 parties are identified and funds are available and  
25 allocated for this purpose.

<p style="text-align: right;">Page 134</p> <p>1        However, Region 4 must argue that responsible  2 parties have not been identified, staff funding has not  3 occurred since 1999 and there's -- no other money for  4 implementation of remediation plans has been allocated.  5 Therefore, although a program may exist it cannot be  6 relied upon as an active alternative enforcement program  7 to effectively address these issues.  8        Additionally, Region 4 recommended the listing  9 of San Gabriel Estuary for trash. However, the state  10 board indicated because there was an alternative  11 enforcement program, namely the MS 4 permit, that this  12 item should be placed on the watch list.  13        However, the storm water permit distinguishes  14 between areas with TMDL's or trash and areas without it,  15 which makes the idea that this is an alternative  16 enforceable program inaccurate.  17        And finally, we are concerned about putting  18 items that have direct beneficial use impact, such as  19 toxicity, benthic community degradation, water toxicity  20 and/or sediment toxicity on a watch list. These are  21 direct impact to the beneficial use for aquatic life and  22 as such are not insufficient in and off themselves to  23 show that there is a impairment.  24        Thank you very much.  25        MR. SILVA: Thank you.</p>	<p style="text-align: right;">Page 136</p> <p>1        beneficial use is no longer impeded or when previous  2 listings were based on thresholds or guidelines that  3 were insufficient for determining impairment.  4        To that I would add listings should also be  5 removed where there that is insufficient data. A watch  6 list should be adopted for waterbodies for which there  7 is insufficient data to warrant a 303(d) listing.  8        Earlier I think the NRC report was cited. In  9 that I'd like to remind you that there was discussion  10 that evaluated data and evidence of violation of  11 narrative standards should not be used exclusively for  12 placement on an action list, but, in their terms, put on  13 a preliminary list, which is the watch list. We think  14 this provides the state and the regional board with the  15 mechanism for improving the listing process.  16        Secondly, I'd like to thank the board for the  17 additions of several delisting factors that were  18 introduced in this 2002 303(d) revision. Some of these  19 have been discussed. The alternative enforceable  20 program now allows items to be delisted when there is  21 another way of controlling those.  22        It was also encouraging that the Los Angeles  23 regional board actually proposed dropping listings of  24 impairments based solely on EDL's or elevated data level  25 because they are not actually directly related to</p>
<p style="text-align: right;">Page 135</p> <p>1        MR. WATSON: Good afternoon. This time I am  2 before you representing the City of Bellflower. My name  3 is Richard Watson. Address, 21922 Viso Lane, Mission  4 Viejo, California.  5        I'm before you this afternoon representing the  6 City of Bellflower, which was unable to send a council  7 member and appropriate staff member because of the  8 California Contract Cities Association Conference going  9 on today. This is also true of several other cities  10 that would have liked to have participated.  11        And I want to thank the board again for the  12 opportunity to comment on these revisions. This is a  13 very good process that you've undertaken and we want to  14 thank you for coming down here.  15        I first want to commend the state board and the  16 staff for making a significant improvement in the  17 listing process through the incorporation of the watch  18 list. The use of a preliminary list is an important  19 step towards strengthening the basis for the TMDL  20 program. It allows us to focus on well defined problems  21 first.  22        As the Los Angeles regional water quality  23 control board staff itself said in their report in the  24 listings, listings of impairment should be removed in  25 cases where recent information indicates that a</p>	<p style="text-align: right;">Page 137</p> <p>1        adverse human or animal health impacts, really just a  2 comparative statistical measure. So we think it's a  3 good move as well. And also removing those places that  4 were listed because of exceedances due to natural  5 causes.  6        However there are several problems that remain  7 with many of impairment designations identified in the  8 303(d) list. For example, in an number of instances  9 specific pollutants were not identified. And without  10 details on specific pollutants or consistency of  11 impairment designation among regional boards, such  12 listings remain arbitrary and without practical or legal  13 support.  14        As noted in the Clean Water Act, the 303(d)  15 list must include a description of the pollutants  16 causing the violation of water quality standards, and I  17 have included the citation in the written version of my  18 testimony.  19        Generalized conditions of impairment are not  20 pollutants. They are not causing the impairments and  21 thus are inappropriately triggering the development of  22 TMDL's. Rather than including conditions as impairments  23 on the 303(d) list itself they should be instead placed  24 on the watch list. This list will enable the regional  25 boards to better identify what's causing the impairment;</p>

1 in other words, specify the pollutants required by the  
2 303(d) portion of the act and for which then TMDL's can  
3 be properly identified or prepared.

4 The following are a few examples of some of the  
5 general conditions for which the 303(d) list of  
6 pollutants are not identified. Beach closures,  
7 toxicity, color, degraded benthos, turbidity,  
8 eutrophication, benthic community degradation.

9 Each of these conditions are not pollutants and  
10 have been inappropriately included in the 303(d) list in  
11 the past. They should be placed on the watch list for  
12 possible future actions.

13 Furthermore, in Region 4 any listing related to  
14 the MUN designation that's asterisked on table 2.1 in  
15 the 1994 L.A. basin plan should be removed from the 2002  
16 list because of EPA's recent approval of the entire 1994  
17 plan and the direction to the regional board about the  
18 designation of MUN uses.

19 Thank you again for the steps that the state  
20 board has taken to improve the 303(d) list and for this  
21 opportunity. We think you're really making progress.  
22 Thank you.

23 MR. SILVA: Thank you.

24 That's all the cards I have for Region 4.

25 Anybody I missed or would like to comment on Region 4?

1 Okay.

2 Why don't we try -- we need a lunch break.  
3 Come back at 1:30.

4 (Recess)

5 MR. SILVA: Why don't we get started. I  
6 realize probably not everybody's back, but I'll just  
7 start naming names and whoever can make it -- I will go  
8 back to people that are probably still having lunch  
9 so -- but so we can get going.

10 Debbie Cook. I apologize to the people who  
11 were here earlier.

12 MS. COOK: My name is Debbie Cook. I am the  
13 Mayor of Huntington Beach, and I really appreciate this  
14 opportunity to speak today regarding the listing of the  
15 Santa Ana River as an impaired body. I just learned of  
16 this meeting on Tuesday and so our county will not be  
17 taking up the matter until our Monday night meeting but  
18 I expect complete support from them for listing in light  
19 of all of our past efforts and will send a follow-up  
20 letter next week.

21 Perception can be everything when it comes to  
22 attracting visitors to the beach. People equate trash  
23 with pollution. Our city is reeling from some of the  
24 irresponsible press we have received in the last two  
25 weeks from "USA Today," Tom Brokaw, and some of the

1 other news agencies.

2 Our city takes great offense as being labeled  
3 as having the dirtiest beaches in Southern California  
4 when in fact we have eight and a half miles of some of  
5 the cleanest beaches, according to Heal the Bay.

6 However, having said that, we have one  
7 notoriously bad section and that is the mouth of the  
8 Santa Monica River. Huntington Beach hasn't given lip  
9 service to water quality. We have taken action. We  
10 have spend millions investigating beach contamination.  
11 We have sewer-lined all of our leaking sewer lines. We  
12 are in process of becoming possibly the first California  
13 city to deal and adopt a water quality master plan.  
14 We've passed an unpopular sewer fee and we are  
15 investigating passing an urban runoff fee.

16 We are also one of the few cities that has not  
17 protested the new NPDES permit requirements, despite the  
18 fact that we expect it to cost us a half a million  
19 dollars a year. We recognize that we're the low end of  
20 the plumbing in Orange County and prove it with our 25  
21 lift stations and our 15 storm water lift stations.

22 We have a lot of expensive infrastructure, but  
23 we also recognize and are cognizant that we're the  
24 stewards of eight and a half miles of Orange County's  
25 best beaches which attracts millions of visitors from

1 inland.

2 Huntington Beach is taking care of business and  
3 we need to get our inland neighbors to recognize this as  
4 a regional issue. When someone throws his empty cup in  
5 the gutter in Santa Ana in the morning he just may be  
6 swimming with it that afternoon.

7 I'm happy to join the City of Newport Beach in  
8 supporting the listing of the Santa Ana River as an  
9 impaired body. Thank you.

10 MR. SILVA: Thank you. Appreciate your  
11 patience.

12 Rene Aguilar?

13 MR. AGUILAR: Good afternoon. My name's Rene  
14 Aguilar. I'm a resident of Orange County and have lived  
15 in Orange County for about the past 25 years, most of my  
16 life, and I frequent the beaches, the local beaches,  
17 Newport Beach, Huntington Beach, quite often, and I just  
18 want to give my perspective on the trash at the beach  
19 and also in the Santa Ana River.

20 I swim in the water and it's really an eyesore  
21 when I'm swimming in the water and I see trash floating  
22 next to me. You can stand on the beach and you can see  
23 the trash that washes up on the shore.

24 I also ride my bike on the Santa Ana River from  
25 northern Orange County all the way to the mouth of Santa

1 Ana River where it discharges into the ocean. Actually  
2 a couple weeks ago I was down there at the Santa Ana  
3 River and I couldn't help but notice all the trash  
4 that's all along the riverbed down there.

5 I actually walked down there and was looking at  
6 the trash and I took a look to the left and as far as I  
7 could see there was trash littered across the whole  
8 riverbed and then I looked to the right and the same  
9 thing -- trash littered across whole riverbed.

10 And then I couldn't help but think about the  
11 next storm that we have in the area. It's going to take  
12 all this trash that's in the river and wash it straight  
13 out into the ocean and then it will be ultimately  
14 deposited along the coast of our local beaches.

15 And I would urge the water board to list the  
16 Santa Ana River as being trash impaired, so that we can  
17 hopefully clean up this trash and enjoy the aesthetic  
18 value of our local coastlines. Thank you very much.

19 MR. SILVA: Thank you.

20 Brandt Schmidt?

21 MR. SCHMIDT: Good afternoon. My name is  
22 Brandt Schmidt and I have been a resident of Newport  
23 Beach since 1983. For years now I've been surfing the  
24 beaches of Newport and Huntington and as of right now I  
25 will not surf within eyesight of the mouth of the Santa

1 Tom Crew? Still eating lunch. Okay. Peer  
2 Swan?

3 MR. SWAN: Thank you very much, Mr. Silva. I  
4 appreciate the opportunity to speak here and also the  
5 opportunity to have a break after the meeting, as the  
6 stenographer did as well.

7 My name is Peer Swan. I live at 7 Terraza  
8 Drive, Newport Beach, and I serve as a director  
9 representing the board of the Newport Coast Community  
10 Association and the residents who live in the Newport  
11 coast area of the City of Newport Beach.

12 The Newport coast is blessed having the Pacific  
13 Ocean at its feet and is surrounded by an extensive  
14 wildlife habitat that was mandated to be part of the  
15 development process. The area is drained by a number of  
16 small creeks, six in number, that have been identified  
17 and I've submitted to you a list of these six creeks and  
18 an estimate of their respective drainage areas and the  
19 flow, you know, across the beach during dry weather flow  
20 periods. You will see in there that there is a not  
21 inconsiderable amount of flow in the three creeks that  
22 are being asked to be added to the 303(d) listing.

23 Also I would like to thank the staff for  
24 recommending that Muddy, Buck Gully and Los Trancos not  
25 be added to the 303(d) listing. Two of these three

1 Ana River. I try to stay as far away as possible from  
2 the river mouth.

3 One reason is the non-visible pollutants that  
4 are perpetually draining out into the ocean and another  
5 equally important factor for me is the accumulation of  
6 trash at the river mouth.

7 One of my favorite aspects of surfing is the  
8 aesthetic aspect, the sense of kind of being out in  
9 nature's domain. And nothing disrupts that enjoyment  
10 for me like sitting out in the water and seeing a chunk  
11 of styrofoam or a plastic bottle float by, not to  
12 mention ducking under the water and getting up and  
13 finding a plastic bag or some other piece of trash  
14 clinging to my body.

15 That being said, the river mouth in my opinion  
16 is one of the worse, if not the worse, beaches I've seen  
17 with regard to the accumulation of trash along the  
18 coastline. And I think it's a tragedy that myself and  
19 other surfers I know virtually consider that part of the  
20 coastline adjacent to the river mouth to be virtually  
21 off limits as far as water contact goes.

22 That being said, I support listing the Santa  
23 Ana River as an impaired body due to trash. Thank you  
24 very much.

25 MR. SILVA: Thank you.

1 creeks have already -- are already being operated under  
2 about BMP's that divert the dry weather flow to sanitary  
3 sewers during a substantial portion of the year. The  
4 third is the subject of a planned and voluntary program  
5 to significantly reduce the flow and consider dry  
6 weather diversions. This is all being done under the  
7 county's permission.

8 The remaining three creeks are recommended to  
9 be added to the listing, and these drain a relatively  
10 small area and have virtually no dry weather flow across  
11 the beach. We would respectfully request that the board  
12 consider the deletion of these three creeks, the Pelican  
13 Hill creeks, from this listing.

14 I would like to emphasize that we in the  
15 Newport coast and on the board are strongly committed to  
16 protecting and improving the water quality in our area.  
17 These are, after all, our beaches where our children and  
18 our families go, you know, right at the foot of the hill  
19 that we live on.

20 We believe that water quality improvement can  
21 best be accomplished by implementing the BMP's  
22 contemplated in the County of Orange recently adopted  
23 MS 4 program. We think the recent results in the coast  
24 as far as the quantity and quality of the water going  
25 into the ocean have made significant progress and we are

1 encouraged by this and think that that will continuously  
2 improve.

3 We believe, as we have previously stated in  
4 writing to this board, that the process of listing of  
5 any of the coastal creeks at this time is flawed due to  
6 the failure to identify these creeks in the county's  
7 basin plan prior to assigning the water quality  
8 standards. We think that you have to identify the  
9 creeks in the basin plan prior to establishing water  
10 quality standards.

11 As we understand it, if the proposed listing is  
12 realized that it would mandate water quality standards  
13 on the entire length of the creeks from the top to the  
14 bottom and without regard to any natural attenuation in  
15 the creek or any diversions to the sanitary sewer or  
16 other BMP's implemented lower in the system. And we  
17 think that would be a mistake, especially since very  
18 little dry weather flow goes across the beach.

19 We are also concerned that the extensive  
20 habitat through the drainage area complicates the issue  
21 and for which the homeowners should not be held  
22 responsible as the habitat was mandated by another state  
23 agency as a condition of the development.

24 As a parent who uses the beaches I stay out of  
25 the water after storms. I don't let my family go in

1 going to be done in the future it needs to go through a  
2 separate and distinct planning process with public  
3 input.

4 The ramification of listing the thousands of  
5 small drainage creeks along the state's waterways,  
6 especially those not identified in the existing basin  
7 plan, is considerable and has little benefit. We  
8 believe that existing permits will over time bring the  
9 most significant of these creeks into compliance while  
10 not detracting from the focus on more significant  
11 waterways.

12 Again I'd like to thank the staff. I'd like to  
13 thank you, Mr. Silva, for patiently listening to all of  
14 us through this and allowing us to have lunch and the  
15 Krispy Kream donuts. Whoever brought those I appreciate  
16 that, even though my wife won't.

17 I appreciate you're not adding to the list  
18 Muddy, Buck Gully or Los Trancos and we would request  
19 further consideration to delete from the listing the  
20 three small Pelican Hill creeks and allow the existing  
21 permits to handle the cleanup process through about  
22 BMP's. I think especially looking at the reasonable  
23 insignificance of the drainage area and the amount of  
24 water going across that this would not be the highest  
25 priority item that we would consider today. And thank

1 after, you know, storm water events. I don't think  
2 that's wise any more than I would let my children play  
3 on the Coast Highway. I mean, it's almost common sense.

4 And I would not let my kids, you know, lay in  
5 any kind of runoff that went across the beach either. I  
6 think that is also common sense. Nor would I take  
7 pictures of anyone doing that. I wouldn't let them be  
8 there.

9 It's been curious to me that -- forget that.  
10 Finally, none of the coastal streams are planned as a  
11 future source of drinking water or for municipal use. I  
12 think that we've done extensive work in Southern  
13 California, especially after the Kewell bill and the  
14 Coster bill, identifying all our future water needs for  
15 the next 20, 30 years. And none of these areas in the  
16 coastal creeks areas or in much of the rest of Orange  
17 County have been identified as municipal use.

18 And so with over 30 years of visibility out  
19 into the future, it would seem premature to line them up  
20 and identify them as has been done in the staff report  
21 talking about these creeks. They've been deemed or  
22 listed as municipal use.

23 These creeks have not been identified in the  
24 coastal plan and have not heretofore been identified as  
25 either having recreational or municipal use. If that's

1 you very much for your time.

2 MR. SILVA: Thank you.  
3 James Ross?

4 MR. ROSS: Mr. Silva, thank you for allowing us  
5 to come here today. My name's James Ross. I'm the  
6 executive director of Public Works for the City of Santa  
7 Ana. We have -- I'll be very brief. We have submitted  
8 a letter from our mayor and our main concern is the  
9 designation of Delhi Channel on the 303(d) listing.

10 And, you know, I would like to point out Delhi  
11 Channel, unlike some of the other channels that perhaps  
12 are being used for storm drain purposes that previously  
13 were creeks or rivers, Delhi has never been a creek or a  
14 river. Delhi was an irrigation ditch back in the  
15 forties. It was improved with riprap and concrete  
16 lining on the bottom. It's fenced. It's simply a part  
17 of the storm drain system and is no different than the  
18 pipes in the grounds that also serve that system.

19 So that is my main message. I would refer you  
20 to the letter that we submitted. I'd refer you to the  
21 comments that were previously submitted to you by the  
22 County of Orange, Mr. Larry McKenney came up and spoke,  
23 and I'd also refer you to the fact that at the Santa Ana  
24 regional board meeting there was considerable discussion  
25 about the 303(d) listing and reservations by the board

1 about the designation of Delhi, whether that was an  
 2 appropriate listing for that particular channel.  
 3 And in fact the executive director of the  
 4 California Regional Quality Control Board did send a  
 5 letter I believe that you also have identifying what  
 6 took place at that meeting and some of the reservations  
 7 that were expressed. So with that I just refer you to  
 8 those three documents and thank you very much for your  
 9 time.

10 MR. SILVA: Appreciate it.  
 11 Mike Loving?

12 MR. LOVING: Mr. Silva, Staff. My name's Mike  
 13 Loving. I am the NPDES coordinator for the City of  
 14 Irvine and I thought it was interesting that a couple of  
 15 the previous speakers spent a lot of time at the mouth  
 16 of the Santa Ana River. I do as well. I fly fish there  
 17 year round, during, before and after storms and times in  
 18 between. And I have to share their concerns. It's  
 19 really an eyesore. I've had more than a few pieces of  
 20 litter attached to my body in the process of fishing in  
 21 that location.

22 On behalf of the city I'd like to thank you for  
 23 the opportunity to provide comments on the 303(d) list  
 24 and in the interests of the time I'll try to keep my  
 25 comment brief.

1 In addition to fully supporting the concerns  
 2 expressed by the other stakeholders today, a particular  
 3 concern to the City of Irvine is the listing of San  
 4 Diego Creek Reach 1 as impaired due to fecal coliform.

5 It's going to be somewhat difficult to not  
 6 state issues previously discussed, so I'd like to share  
 7 with you some personal observations to illustrate our  
 8 concerns.

9 I recently walked about a 2-mile reach of the  
 10 San Diego creek to do a reconnaissance for an upcoming  
 11 creek cleanup later this summer. To my surprise I  
 12 found less debris in the channel than I expected.  
 13 But there were some problem areas.

14 For example, the pipe draining the 405 freeway  
 15 into San Diego Creek was totally clogged with litter.  
 16 There were dozens of the shopping carts in the creek.  
 17 Terrible eyesore.

18 Now, even though it's impossible to remove all  
 19 the debris and litter from the creek, the City of Irvine  
 20 believes that this material can be reduced in  
 21 significant levels with more effort on the part of all  
 22 the stakeholders. This is one pollutant that we can  
 23 remove from our waters effectively with very low tech  
 24 solutions. This is not rocket science. We can see it  
 25 and therefore we can pick it up.

1 This is not the case with fecal coliform.  
 2 During my reconnaissance I found an abundance of  
 3 wildlife in the channel. I found coyote, birds, fish  
 4 but I also found a significant amount of animal waste.  
 5 In fact over the years I've seen -- just an example --  
 6 I've seen coyote, raccoon, possums, rabbit, peregrine  
 7 ducks, hawks, owls and innumerable other species in the  
 8 creek, swallows build hundreds of nests on bridges  
 9 directly over the water in the creek and I've even seen  
 10 pelican feeding on carp at the confluence of Peters  
 11 Canyon Wash, many miles from the ocean.

12 We take third grade classes on tours to the  
 13 channel to show them this wonderful little slice of  
 14 nature. But we also show them the shopping carts and  
 15 other debris to emphasize that it's everyone's  
 16 responsibility to keep pollutants out of our waters.

17 It's obvious that fish and wildlife beneficial  
 18 uses in San Diego correct are appropriate. How could  
 19 they not be? Fish and wildlife are going to be in the  
 20 creek regardless of beneficial use designations.  
 21 However, large amounts of naturally occurring waste are  
 22 also associated with these uses.

23 One has to draw the conclusion that if pet  
 24 waste creates a water pollution problem and we're  
 25 required under our permit to reduce this waste, a

1 greater amount of waste from wildlife deposited directly  
 2 into our waters would create even larger quality  
 3 problems. For this reason we don't believe MUN and  
 4 Rec 1 uses are compatible with wildlife uses.

5 I won't comment any further on comments  
 6 previously made about the appropriateness of swimming  
 7 and Rec 1 uses in flood control channels. Our concern  
 8 with Rec 2 uses does not lie in the use itself but  
 9 rather with the unattainable water quality objective  
 10 linked to this beneficial use.

11 In conclusion the City of Irvine respectfully  
 12 requests that the board take action to assure that the  
 13 303(d) list and associated beneficial uses result in  
 14 realistic water quality objectives for the stakeholders  
 15 and we offer our assistance to work with your staff to  
 16 get this result. Thank you.

17 MR. SILVA: Thank you.

18 Gary Brown?

19 MR. BROWN: Good afternoon. My name is Gary  
 20 Brown, Orange County Coastkeeper executive director. I  
 21 want to thank you for the opportunity to be here today  
 22 and express our issues and concerns over the 303(d) list  
 23 and certainly we want to thank the hard work that the  
 24 staff of Region 8 has gone through in developing this  
 25 303(d) list as far as the recommendations.

1 We virtually supported the recommendations by  
2 the regional board to the state board for the inclusions  
3 and deletions on the 303(d) list. However, we want to  
4 specifically talk about the coastal creeks.

5 Last year it was our organization that  
6 submitted the coastal creeks for inclusion on the 303(d)  
7 list and one of the reasons in spending time down  
8 there -- and we have spent a lot of time on the Newport  
9 coast dealing with issues and the ASBS and drainage and  
10 future flows going into the ASBS -- and we noticed that  
11 in Buck Gully in particular there were a lot of kids on  
12 a daily basis, adults, children and toddlers playing in  
13 the flow as it meanders across the beach into the ocean.

14 And it was such a concern to us that we went to  
15 the city, we went to some other agencies, and basically  
16 we took the initiative, got an emergency permit, and we  
17 funded and installed a diversion in Buck Gully for last  
18 year's summer flow to take about 125 gallons a day out  
19 of the creek to the sewer treatment plan and keep it  
20 away from the beach, because it wasn't an occasional  
21 thing. It was a daily basis.

22 What we found is a lot of mothers bring young  
23 children and fathers too bring young children down to  
24 the beach and the flow coming across the beach is so  
25 much less intimidating to a toddler than having them

1 interrupted and have changed the historic flows and so  
2 it's up to us to resolve it.

3 We're working together in Buck Gully to come up  
4 with some BMP's and put some stakeholders together and  
5 do this. However, in the meantime I think that it's  
6 incumbent on the state board to include Buck Gully on  
7 the 303(d) list, in that even though it had -- these  
8 creeks had not had previous designations for water  
9 quality objectives in the basin plan, we think that with  
10 adequate proof that there is existing and ongoing  
11 recreational uses that they should be included. Thank  
12 you very much.

13 MR. SILVA: Thank you.

14 MR. WILSON: Mr. Silva, may I have a  
15 clarification?

16 Mr. Brown, have you submitted the documentary  
17 evidence of the existing uses to the state board?

18 MR. BROWN: Yes, we have.

19 MR. WILSON: Thank you very much.

20 MR. SILVA: Molly Calkins?

21 MS. CALKINS: Thank you, Mr. Silva, Chief  
22 Wilson. I am Molly Calkins on behalf of Defend the Bay  
23 at 471 Old Newport Boulevard, Newport Beach. I am also  
24 a member of the AB 192 public advisory group. Thank you  
25 for this opportunity to comment as well as for extending

1 play in the surf and so under their parents' supervision  
2 they had kids playing and we have sent to the state  
3 board even photographs of toddlers cupping their hands  
4 and drinking water out of Buck Gully. And so that  
5 was -- it has been a very extreme concern to us.

6 Our concern about the state's recommendation is  
7 basically of the coastal creeks you've kept -- included  
8 on the list, the creeks that have no dry flow and have  
9 the least amount of flow, and Buck Gully, the one that  
10 has the major flow, 250,000 gallons a day, and we have  
11 proven beyond a question that there's been a long time  
12 existing Rec 1 and Rec 2 use there, that's the one  
13 you've decided to delete. And it totally doesn't make  
14 sense at all to us. And that's our major concern that  
15 we want to express today.

16 And certainly people say these coastal creeks  
17 shouldn't be on the list because they have a high  
18 background levels of bacteria to begin with. And, yes,  
19 that's true. But what you have to figure is that up  
20 until very recent history, until we developed that, that  
21 these creeks only ran when it rained and people didn't  
22 go out and recreate during a rain storm or right after.

23 And now these creeks flow perennially and they  
24 flow daily -- June, July, August, September, October,  
25 when there is not a cloud in the sky. So we have

1 the period for written submissions. We will be  
2 submitting written submissions before the June 15th  
3 deadline.

4 Today I'd like to make four points. First,  
5 impaired waters should not be delisted. I agree with  
6 the comments previously made by NRDC and Heal the Bay  
7 representatives, so I'll speak specifically to a couple  
8 of water segments in Region 8.

9 These revisions propose delisting Newport Bay  
10 and San Diego Creek for various pollutants and the  
11 reasons stated in the revisions are -- I quote --  
12 "TMDL's have been incorporated into the basin plan and  
13 approved by USEPA."

14 Now, just because TMDL's have been incorporated  
15 and approved does not mean that these waters are no  
16 longer impaired. Section 303(d) of the Clean Water Act  
17 requires listing of impaired waters. So delisting  
18 waters that are still impaired would constitute a  
19 violation of the Clean Water Act.

20 Second, we support eliminating the watch list  
21 as well as TMDL's completed list. Again we agree with  
22 comments previously made on this issue. I want to  
23 emphasize that Section 303(d) says that impaired waters  
24 must be listed and it does not provide for any side  
25 lists or alternative lists. Therefore, listing impaired



1 waters on any other list beside the 303(d) list would  
2 constitute a violation of the Clean Water Act.

3 Third, we support adding Newport Bay to the  
4 303(d) list specifically for impairment due to trash.  
5 Trash impairs the beneficial uses of Newport Bay as they  
6 are listed in the basin plan. Recreation is an  
7 important beneficial use of the bay. Trash, being the  
8 most visible type of pollutant, impairs the aesthetic  
9 beauty of the bay and it hinders the enjoyment of  
10 visitors to the bay.

11 Navigation and commercial fishing are other  
12 beneficial uses. Trash in the bay fouls boat  
13 propellers, it clogs cooling intakes, damages hulls.

14 In addition, wildlife and vegetation are  
15 impaired by trash in the bay that includes habitats for  
16 rare, threatened, endangered species.

17 Newport Bay really is a treasure and we need to  
18 protect it from trash as much as from any other  
19 pollutant.

20 Now, fourth and finally, we also support adding  
21 the Santa Ana River to the 303(d) list for impairment  
22 due to trash. I agree with the comments already made by  
23 Debbie Cook, Mayor of Huntington Beach, as well as by  
24 Rene Aguilar and Brandt Schmidt.

25 As with Newport Bay, trash hinders the

1 First of all I'd like to start off by saying  
2 that Irvine Ranch Water District fully supports the  
3 state's efforts to improve the quality of the state's  
4 surface waters, including the state's 303(d) process  
5 that we're going through today.

6 Irvine Ranch Water District is a domestic  
7 water, waste water and reclaimed water utility. It is  
8 in the process of developing a regional project called  
9 the Natural Treatment System that would utilize a series  
10 of man-made weapons to treat urban runoff in the San  
11 Diego Creek watershed.

12 As a part of this project, Irvine Ranch Water  
13 District is proposing to construct in a number of the  
14 wetlands storm drain channels which will by their very  
15 nature attract wildlife such as waterfowl. The presence  
16 of waterfowl would make it nearly impossible to meet the  
17 bacteriological water quality objectives established for  
18 Rec 1 waters such as San Diego Creek.

19 As a result a treatment system designed to  
20 improve regional water quality, including upper Newport  
21 Bay, which is heavily used as a recreational waterbody,  
22 may violate the Rec 1 water quality objectives  
23 established for San Diego Creek, a waterbody with  
24 limited if any recreational uses. So our district is  
25 concerned about that. We're hoping that can be

1 beneficial uses of the Santa Ana River. People who  
2 bicycle or stroll along the bay are confronted by large  
3 amounts of trash. Fish that are dependent on the  
4 river's warm fresh water habitat are impaired by trash.  
5 Wildlife and vegetation, including habitats for rare,  
6 threatened and endangered species, are impaired by trash  
7 in the Santa Ana River.

8 Now, that's in the river itself. As the others  
9 commented, trash from the Santa Ana River flows  
10 downstream into the ocean and eventually rides the tide  
11 back up on to the beaches. In this way trash fouls  
12 those beaches, it repels visitors, it even injures  
13 people when it comes to broken glass, other sharp  
14 objects. It decreases tourist revenue and it causes  
15 those cities of Huntington Beach and Newport Beach to  
16 incur high cleanup costs.

17 We therefore urge the state board to add the  
18 Santa Ana River as well as Newport Beach to the Section  
19 303(d) list for impairment due to trash. Thanks very  
20 much.

21 MR. SILVA: Thank you.

22 John Hills?

23 MR. HILLS: Good afternoon. My name's John  
24 Hills, the Director of Water Quality for the Irvine  
25 Ranch Water District, 3512 Michelson in Irvine.

1 addressed in this process as well.

2 As a result IWRD believes there is a need to  
3 revise the criteria used by the state in applying the  
4 various beneficial use designations to waterbodies,  
5 which we believe in some cases have been misapplied.

6 An example of this is the San Diego Creek. The  
7 San Diego Creek has low intermittent flows comprised  
8 predominantly of urban runoff. San Diego Creek has been  
9 designated as a municipal and domestic supply and new  
10 TMDL's for fecal coliform will now be developed to  
11 protect the San Diego Creek as such.

12 Now, as a water purveyor IRWD would not  
13 consider utilizing San Diego Creek as a domestic water  
14 supply. The flows, as I indicated, are intermittent in  
15 nature, the sources are sometimes unknown -- the sources  
16 of water in the creek, the quality of the water varies  
17 significantly, and there would be significant public  
18 perception concerns associated with our use of that as a  
19 supply.

20 One could argue that although it is not being  
21 used today as a municipal supply there is a potential  
22 that the San Diego Creek may be utilized as a water  
23 supply in the future, should the region's current  
24 supplies not be able to meet demands. This may be the  
25 case. However it's IRWD's position that beneficial use

1 designations should be applied based on current uses,  
2 not future uses.

3 If in the future there becomes a need to  
4 utilize waterbodies such as San Diego Creek as domestic  
5 supply we have a process in place a 303(d) process we're  
6 going through today to address this concern by  
7 re-designating waterbodies such as San Diego Creek based  
8 upon new proposed use.

9 IRWD's main concern is that significant  
10 resources are and will be expended in providing high  
11 levels of protection that may not be necessarily based  
12 on the current uses of the waterbody. Therefore IRWD  
13 requests that the state's criteria used in applying  
14 beneficial use designations be revised to reflect two  
15 things: First, current, not future, uses of the  
16 waterbodies; and then, second, that the overall  
17 watershed benefits of regional urban runoff treatment  
18 systems such as the NTS be able to be realized in terms  
19 of overall benefits. Thank you for your time.

20 MR. SILVA: Just to be clear, I think just a  
21 comment that to change use designations we have to go  
22 through regional boards.

23 MR. HILLS: Well, I wanted to bring that up  
24 because it's the effect -- the designations were made  
25 and now we're at a point now where it's being listed and

1 note that we appear to be one of the few folks  
2 testifying today on behalf of the private sector impact  
3 on what you are evaluating today. We feel it's  
4 important to be here. We have a direct impact, direct  
5 interest in the revision of the Clean Water Act 303(d)  
6 listings.

7 First and foremost, our comments rely a lot on  
8 a letter that we submitted to the Santa Ana regional  
9 water board which I've included as an attachment dated  
10 April 26 and we want to commend you for your public  
11 hearing today and we also -- without sounding like it's  
12 a short-shrifted concept, we all, every single trade  
13 association that we're representing, agree with the  
14 clean water and promote what you're all attempting to  
15 do. Obviously we're involved in tourism, residential  
16 housing, and our businesses need the objectives that  
17 you're attempting to meet today.

18 We also want to commend your board for adopting  
19 the approach recommended by the National Research  
20 Council creating a watch list status for the waterbodies  
21 in question. We still do have many concerns. We've  
22 outlined them in the prior letter. I've outlined them  
23 today.

24 I've noticed several other of the cities at  
25 least have been representing some concerns, so I will

1 then TMDL's are being established. When you ratchet it  
2 back up, it's going back to the original designations  
3 that are made and we feel it may not be appropriately  
4 applied.

5 MR. SILVA: Okay. Thank you.

6 Jim Oster?

7 Christine Iger?

8 MS. IGER: Hi. I am Christine Iger with the  
9 law firm of Manatt Phelps and Phillips and I've had the  
10 pleasure of being here since 9:00 and you're just doing  
11 a wonderful job of listening to all of us.

12 I'm here to represent the private sector and I  
13 have submitted some written comments on behalf of who I  
14 represent.

15 Briefly, without walking through all the  
16 organizations, I just wanted you to know that we  
17 represent 20 private sector trade associations,  
18 including Orange County Apartment Association, Orange  
19 County Realtors, Orange County Business Council,  
20 California Association of Community Managers, the Orange  
21 County Building Industry Association, and I don't want  
22 to overlook any of the others, who include the Los  
23 Angeles Chamber of Commerce.

24 Just briefly again, I have referenced who those  
25 organizations are and their large memberships and I will

1 just try to outline without speaking too fast for you  
2 some of the things that we are also wanting to point  
3 out.

4 We're concerned that the regional water board  
5 applied inappropriate water quality objectives and  
6 designated beneficial uses to many of the proposed  
7 revisions. The coalition that I represent, the 20 trade  
8 associations, believe that the selection of beneficial  
9 uses should be made with consideration of the condition  
10 of the waterbody, the overall advantage of achieving a  
11 given designated use, and the cost of achieving a  
12 designated use.

13 In particular, as you have heard, our coalition  
14 and others question the appropriateness of a beneficial  
15 use designation for flood control channels,  
16 concrete-lined channels and waterbodies with limited  
17 access.

18 Again, an example in Orange County is the Delhi  
19 Channel, which the City of Santa Ana just referred to,  
20 which is listed for MUN, Rec 1 and Rec 2 uses.

21 Mandating that that and other similar  
22 waterbodies of limited access or where access is illegal  
23 that it meet drinking water and recreational swimming  
24 standards is, we believe, an inappropriate application.

25 Furthermore, we'd like to urge your board to

<p style="text-align: right;">Page 166</p> <p>1 adopt an approach to regulating, maintaining and  2 improving water quality through measures which are as  3 technically proficient as possible.  4 Specifically we ask that your board consider an  5 economic analysis to evaluate the impact of implementing  6 basin plan water objectives to non-point sources  7 including storm water and urban runoff.  8 To insure that the designated uses are feasible  9 and appropriate, we urge the state water board consider  10 a use attainability analysis before developing any  11 TMDL's.  12 And just quickly, in conclusion, I do have  13 several of any coalition members here today, who, if  14 they are still here, they do plan to testify as well.  15 And I know that they will ask you to consider the  16 economic impact, especially on their particular  17 businesses and organizations.  18 We also would ask you to consider the need for  19 developing housing, the probable future beneficial uses  20 of any given waterbody. And, in conclusion, we would  21 ask that you review each region's basin plan with  22 particular focus on the designated beneficial uses and  23 water quality objectives prior to adding waterbodies to  24 the final 303(d) listing.  25 We believe the 303(d) process contains</p>	<p style="text-align: right;">Page 168</p> <p>1 going to require a unified effort to solve it. We are,  2 the BIA in Orange County, an active participant in  3 finding solutions to the water quality problems that  4 we're facing and I'm telling you a lot of resources are  5 being dedicated towards that.  6 To start, our new communities are being  7 developed with state of the art BMP's. We're talking  8 about giving up lots of land, acreage to provide  9 retention basins and clarification processes.  10 Secondly, we're actively involved in the local  11 committees and coalition groups that include both public  12 sector and environmental advocacy groups. We really are  13 trying to be part of the team to find solutions.  14 Again, we want to see regional solutions. And  15 our comments are identified in the May 30th letter that  16 Christine just dropped off. But regional solutions  17 which could be thwarted based upon the way the basin  18 plan is set up now and the designation of beneficial  19 uses -- I understand you indicated that's not really the  20 subject today, but we want to make it clear that some of  21 the waterbodies in Orange County that have been  22 designated for recreational uses maybe ought not to be  23 and there should be consideration of the condition of a  24 waterbody, the advantages of achieving a designated use,  25 and the costs of achieving a designated use.</p>
<p style="text-align: right;">Page 167</p> <p>1 significant flaws in large part because of needed  2 improvements to the beneficial use designations and  3 water quality objectives. We urge you to work with us.  4 We want to work with you and we appreciate your time and  5 your participation today. Thank you.  6 MR. SILVA: Thank you.  7 Mike Balsamo?  8 MR. BALSAMO: Good afternoon. My name's Mike  9 Balsamo and I represent the Building Industry Associates  10 of Orange County. We are part of the coalition that  11 Christine just spoke of.  12 BIAOC is a nonprofit trade association,  13 consisting of more than 1000 companies and more than  14 75,000 employees, in the business of providing homes to  15 the residents of Southern California. Our membership  16 includes home builders, subcontractors, suppliers, title  17 companies, engineers, architectural firms and other  18 types of construction-related companies.  19 Many people -- or it's often said in Orange  20 county our industry is the driving force of the Orange  21 County economy. I want to state unequivocally that we  22 are committed to water quality. We want to see it with  23 reasonable regulation.  24 We think that this issue is a societal issue  25 that affects everyone who lives in a given region. It's</p>	<p style="text-align: right;">Page 169</p> <p>1 Delhi Channel was mentioned. Newport Coast has  2 been discussed today. Most of Central and South Orange  3 County has hillside areas, you know, that have natural  4 drainage courses that, you know, only see water  5 intermittently throughout the year and even when there  6 is water often it's six inches or less in depth and very  7 infrequently has human contact.  8 We are just looking for reasonableness again  9 about whether or not these should be designated for  10 recreation uses.  11 The other issue, in terms of housing  12 affordability, we already face a major crisis in  13 California and we're not able to provide enough homes  14 for the people that would like to live here and for our  15 children as they get to the age where they might be able  16 to buy homes.  17 Each new regulation -- not just these water  18 board regulations but we're hit by a barrage of  19 different laws that raise the cost of housing. No doubt  20 that NPDES requirements, you know, in different  21 technologies that are being used to implement these  22 regulations raise the cost of a home to, you know, a  23 significant amount, and I just wanted to bring that to  24 your attention.  25 Again, we want to be part of the solution to</p>

<p style="text-align: right;">Page 170</p> <p>1 the water quality problems but we just want to see  2 reasonable regulation and we think that the basin plans  3 should only identify waterbodies that really do have  4 recreation use, not otherwise. Thank you.  5 MR. SILVA: Thank you.  6 Karen Conlon?  7 MS. CONLON: Good afternoon, Mr. Silva, Staff.  8 My name's Karen Conlon. I'm the president of the  9 California Association of Community Managers. We are a  10 statewide professional association whose membership  11 consists of the professional community managers who  12 manage the over 34,000 homeowners associations in the  13 State of California.  14 The homeowners associations represent  15 approximately 9 million homeowners of the 36 million who  16 live in California. If you're quick at math that's  17 25 percent of the population. That means that one in  18 four live in some form of community association.  19 Our focus at CACM is to educate the manager who  20 can then educate the consumer to run their association  21 accordingly. They are regulated by a variety of laws  22 and mandates that the legislature and folks like  23 yourselves mandate that they must adhere to.  24 Our concern is that the burden that could  25 potentially become a cost factor to these associations</p>	<p style="text-align: right;">Page 172</p> <p>1 Region 8?  2 Okay. I think we're done for today. Staff,  3 any other comments or notes?  4 Again, thank you for your comments. They will  5 be looked at and listened to by the board and we will  6 also await your further comments, written comments, by  7 June 15th. Thank you. We're adjourned.  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 171</p> <p>1 becomes problematic in enforcing whatever the mandate is  2 and also just trying to -- with a group of volunteers,  3 which is what the boards of directors consist of -- try  4 to keep in compliance with all the regulations that  5 currently exist and continue to be mandated to our  6 associations.  7 I am TMDL-challenged. I am -- you name it and  8 I am challenged. I am not the technical person here. I  9 am a little overwhelmed by all the comments that have  10 been made today, only because that's not my area of  11 expertise. But I'm here to talk about the reality to  12 the consumer when these things happen, when these  13 standards are imposed upon the consumer.  14 So I think today I just ask that you consider  15 focusing on creating standards that'll create and earn  16 public support as well as produce reasonable, sensible  17 and appropriate applications that match the designated  18 use and keep costs in line with the overall objectives  19 of what we all want, and that's good water quality.  20 Thank you.  21 MR. SILVA: Thank you.  22 I'll try the two people that were not present.  23 Tom Crew and Jim Oster. No?  24 Okay. That's all the cards I have. Did I miss  25 anybody or anybody else want to say anything on</p>	<p style="text-align: right;">Page 173</p> <p>1 STATE OF CALIFORNIA }  2 } ss.  3 COUNTY OF LOS ANGELES }  4  5 I, LINDA L. JACKSON, CSR 2985, do hereby  6 certify:  7 That the foregoing proceedings were  8 taken down by me in shorthand at the time and place  9 herein set forth and thereafter transcribed by computer  10 under my direction and supervision, and I hereby certify  11 that the foregoing transcript is a true and correct  12 transcript of my shorthand notes so taken.  13 I further certify that I am neither counsel for  14 nor related to any party to said action nor in anywise  15 interested in the outcome thereof.  16 IN WITNESS WHEREOF, I have hereunto subscribed  17 my name this 13th day of June, 2002.  18  19 _____  20 LINDA L. JACKSON, CSR 2985  21  22  23  24  25</p>

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